

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY

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PETITION OF GILMOURE-BRUNETT, LLC : Case No. S-2781  
SPECIAL EXCEPTION REQUEST : OZAH NO. 11-05  
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A hearing in the above-entitled matter was held on  
January 12, 2012, commencing at 9:58 a.m., at the Office of  
Zoning and Administrative Hearings, 100 Maryland Avenue,  
Davidson Memorial Hearing Room, Rockville, Maryland 20850  
before:

Lynn A. Robeson, Hearing Examiner

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ON BEHALF OF THE PETITIONER:

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P R O C E E D I N G S

EXAMINER: We'll go on the record. Good morning. This is a continuation of the public hearing in the matter of Petition of Gilmoure-Brunett, LLC, BOA case S-2781, OZAH case 11-05, an application for a special exception to permit a child daycare facility at 220 West University Boulevard, Silver Spring, Maryland, on land in the R-60 zone. The properties legal description is Lot 13, Block P.

It's my recollection that at the end of the last hearing, you had completed your case. I just -- I have been -- we received an 18 page or, I don't know how long it is, an e-mail from Ms. Quinn last night. I did review it briefly. It's too complicated for me at this stage to absorb, and it came in at midnight last night. So, I have skimmed it but I haven't had the chance to review it. I will say one thing, Ms. Quinn, I appreciate your diligence. But, it's not up to me to determine whether or not you want Park and Planning staff here. It's up to you. So, I am supposed to be the neutral decision maker. I have already said you have the right to cross-examine the witnesses but that is your right, legally. Legally, you have the right to exercise it but not -- it's not my right. I don't know if I'm being very clear.

MS. QUINN: Yes.

EXAMINER: But, you have to make the decision.

1     Okay?

2                 MS. QUINN:   So, to the response to when --

3                 EXAMINER:   And by the way, all the witnesses are  
4     still under oath.   So, we're not going to redo the oath but  
5     I do remind everyone here that everyone who plans to testify  
6     is still under oath.

7                 MS. QUINN:   Yes.   For the record.   Harriet Quinn.  
8     I just wanted to clarify so that you know this is not  
9     sufficient to respond to Mr. Eapen's response.

10                EXAMINER:   Well, it=s not admitted into the record  
11    yet.   But, I=m not saying whether it=s sufficient or not.   I  
12    haven't even --

13                MS. QUINN:   Right.

14                EXAMINER:   You know, we will talk about whether we  
15    can admit it.

16                MS. QUINN:   Okay.

17                EXAMINER:   But, what I=m saying to you is if you  
18    want to be able to cross-examine a live person, okay, that=s  
19    a right that you have to exercise as opposed to me.   Okay?  
20    So, whether it=s sufficient or not, it=s your case to make  
21    the record.

22                MS. QUINN:   Uh-huh.

23                EXAMINER:   It=s not my job to make your case.

24                MS. QUINN:   I understand.

25                EXAMINER:   Okay?   I don=t know if I=m being clear

1 or not. Okay? So, it=s your decision whether you want Mr.  
2 Eapen here or not. Now, as a preliminary matter because I  
3 -- and the other thing is I know we=re, well, as a  
4 preliminary matter, technically we=re on rebuttal at this  
5 point but I did request that these be in the record. But, I  
6 anticipate that we=re going to have an argument about  
7 whether this should be admitted or not. So, we can discuss  
8 that as a preliminary matter and just so I know, are there  
9 any other preliminary matters that anyone in the audience  
10 has?

11 MR. LEIBOWITZ: I just want to inquire. I had  
12 been forwarded a letter from -- and for the record, Louis  
13 Leibowitz on behalf of South Four Corners.

14 EXAMINER: Yeah. I=m sorry. If the parties could  
15 identify themselves for the record. I dropped the ball on  
16 that one. Go ahead.

17 MS. MEAD: Anne Mead on behalf of the applicant,  
18 Gilmoure-Brunett, LLC.

19 MR. LEIBOWITZ: Thank you. I had been forwarded a  
20 letter from a Kaleen, and her last name is escaping me.

21 EXAMINER: Oh. I have that. About the property  
22 at 219 West University Boulevard.

23 MR. LEIBOWITZ: Correct. I just wanted to  
24 clarify, make sure that you had received that.

25 EXAMINER: We have received that.

1 MR. LEIBOWITZ: Okay.

2 EXAMINER: And it is marked as -- we divide the --  
3 these files are adding up. Yes. It=s 159.

4 MR. LEIBOWITZ: That was my only preliminary.

5 EXAMINER: Exhibit 159.

6 MS. MEAD: Is that --

7 EXAMINER: Do you have a copy of that?

8 MS. MEAD: I have not been copied with --

9 EXAMINER: Okay. All right. So, we will get you  
10 a copy of that letter.

11 MS. MEAD: Okay.

12 EXAMINER: It deals with the use on 219 West  
13 University Boulevard.

14 MS. MEAD: Okay.

15 EXAMINER: Yes?

16 MS. QUINN: How are you? Quinn again for the  
17 record. I was just wondering. Is this an appropriate time  
18 to present the full reports as exhibits? The last session,  
19 you --

20 EXAMINER: I will -- we did request that you  
21 submit them, and I will take them in unless -- do you have  
22 any objection to having the full reports in the record?

23 MS. QUINN: And I do have copies for you.

24 MS. MEAD: Well, I guess my objection would be we  
25 already have the 2009 one. That was in the record. But,

1 why these weren=t submitted in December when we had the  
2 hearing and requested them instead of last night, as far as  
3 if they=re going to be part of her testimony.

4 MS. QUINN: Well, I had submitted excerpts, and I  
5 would note that the applicant has submitted excerpts in  
6 other exhibits unless required to present the full report,  
7 and I offered to present the complete reports which, most of  
8 which aren=t relevant to what my testimony was but just so  
9 that you would have the complete report.

10 MS. MEAD: Then I guess my question is what part  
11 of those reports the hearing examiner will review. If  
12 they=re part of the record, the hearing examiner can review  
13 all of them, and if you=re going to be referring to parts of  
14 the mobility report that we didn=t go over in December, and  
15 I see a lot of numbers attached to the e-mail from last  
16 night, and I don=t know where those numbers are coming from,  
17 if they=re from these mobility reports or where they=re  
18 from.

19 EXAMINER: Ms. Quinn, are the excerpts the  
20 relevant parts?

21 MS. QUINN: The excerpts were from the 2011 report  
22 which was not introduced until December. The 2009, the full  
23 2009 report was already in evidence, and I introduced  
24 excerpts from that. So, you already have the 2009 report.  
25 You do not have the full 2011 report which I have if you

1 would like it. I'm not insisting on it being in the record.  
2 I just was providing it as a courtesy because you indicated  
3 that would better to have the full report. I also have the  
4 full pedestrian safety audit report. Again, everything else  
5 that=s contained within is, was not relevant to my  
6 testimony. I really was showing what the CLV volumes were  
7 and various parts of the pedestrian safety audit. I also am  
8 providing the full Woodmoor/Pinecrest Community discussion  
9 paper along with the parts from the appendix that refer to  
10 the CLV volume.

11 MS. MEAD: And I get the last part. If there were  
12 CLV volume that we could have looked at, you know, over the  
13 past month instead of just receiving it last night and so  
14 having looked at it on our own. But, we=re fine with the  
15 admission of these full reports. Again, our objection is  
16 that they=re irrelevant but if the excerpts are submitted  
17 for -- if the excerpts are the part that are part of her  
18 testimony, we certainly don=t object to the full reports  
19 being submitted.

20 EXAMINER: I understand.

21 MS. MEAD: We just find them irrelevant and --

22 EXAMINER: Right.

23 MS. MEAD: -- don=t consider the weight of the  
24 evidence, the actual weight of the evidence but --

25 EXAMINER: I understand what you=re saying.



1 MS. QUINN: Can I also make another comment? In  
2 my --

3 EXAMINER: Well, just a second.

4 MS. QUINN: Okay.

5 EXAMINER: I understand what you=re saying. I  
6 don=t know where the traffic thing is going, and we did ask  
7 her to submit the full reports. So, I=m going to let them  
8 in, and then we=ll decide what=s relevant or not.

9 Ms. Quinn, when we say submit the full reports at  
10 a hearing that was a month ago, you can=t do it at midnight  
11 the night before this hearing. They haven=t had a chance to  
12 review it, and I have to give them the same right I=m giving  
13 you as far as being able to contest the traffic.

14 We are going to give the attorneys the chance to  
15 think about this. If we need another hearing, I looked at  
16 backup dates. But, I=m not going to do any more  
17 postponements. So, you know, I will give it the weight you  
18 deserve. But, I=m going to let those in. I=m going to let  
19 your letter in, your e-mail, which is Exhibit 163. We=re  
20 going to go through this hearing today, and I=m not, quite  
21 frankly, I=m not inclined at this point to postpone it  
22 further. But, I=m willing to consider it after we hear what  
23 we=re going to hear today. But, I see Ms. Memon here, and I  
24 don=t want her to have to come back. So, your full reports  
25 are admitted. Your e-mail is admitted, and does anyone --

1 you have not seen -- I'm not going to admit Exhibit 159  
2 which is the letter from Ms. Kaleen O'Connor until Ms.  
3 Martin has the chance --

4 MS. MEAD: I go by both. That's okay.

5 EXAMINER: -- to review it. All right? So, is  
6 there anything else?

7 MS. QUINN: I would just note the correction.  
8 From my e-mail I realized that in December I did not  
9 introduce 2004 through 2000 -- I did not introduce the  
10 reports from 2004, 2006, and 2008. I don't believe I  
11 introduced those. I only introduced excerpts in terms of  
12 the mobility reports from 2011 and 2009.

13 EXAMINER: Okay. All right. That's fine.

14 MS. QUINN: So, the full ones that I have today is  
15 2011.

16 EXAMINER: Well, okay. Well, let's get them in  
17 the record. How many are there?

18 MS. QUINN: Should I name each one?

19 EXAMINER: Well, why don't you bring them up here?  
20 We'll go one-by-one. I'm going to mark this as Exhibit 163,  
21 and can you describe what this is?

22 MR. LEIBOWITZ: The e-mail is already numbered  
23 163.

24 EXAMINER: Oh. I'm sorry. She didn't, okay. I  
25 see what happened. It came in so late, she didn't update

1 the list. So, 164, thank you --

2 MR. LEIBOWITZ: You're welcome.

3 EXAMINER: -- is the mobility assessment report.

4 MS. QUINN: October 2011.

5 EXAMINER: And 165?

6 MS. QUINN: Is the staff memorandum from the Bank  
7 of America case that you requested the whole version of. I  
8 had only included the --

9 EXAMINER: Okay. Can you bring it up here?

10 MS. QUINN: Oh. It=s in -- I=m sorry. I gave you  
11 the whole packet.

12 EXAMINER: Oh. It=s all in this document?

13 MS. MEAD: Do we have a copy?

14 EXAMINER: Okay. I=m having trouble separating  
15 out, okay. Is it a memorandum dated March 3rd or is that  
16 part 2006?

17 MS. QUINN: Yes. That=s the next report or  
18 exhibit.

19 EXAMINER: So, that=ll be 165, and that is the  
20 March 3, 2006 memorandum from Ed Axler.

21 MS. MEAD: It=s the full version of 150D exhibit.

22 MS. QUINN: Yes.

23 EXAMINER: Okay. You guys are being really  
24 helpful today. Okay. And then 166.

25 MS. QUINN: Is the full version of 150E, I

1 believe, which is the Woodmoor/Pinecrest unity discussion  
2 paper.

3 EXAMINER: Full version of Woodmoor/Pinecrest.

4 Okay. The next one?

5 MS. MEAD: Yes. Are they, I=m sorry. Are these  
6 part of the --

7 EXAMINER: I=m going through the 26 pages of this  
8 one.

9 MS. QUINN: Yes. That=s an appendix to the  
10 Woodmoor/Pinecrest report. Those are the volumes that --  
11 some of the data they used to come up with the CLV report.

12 MS. MEAD: Do we know which appendix it is so the  
13 appendixes aren=t all provided just --

14 MS. QUINN: Yeah. And actually, as I mentioned in  
15 the e-mail, I know you haven=t had a chance to look it over,  
16 but this is a working document that we haven=t even  
17 discussed yet in our community, and I introduced excerpts  
18 from it in December to show the CLV volumes. The appendix  
19 that=s included is from the traffic count data, appendix B.  
20 I did not include all of the appendices but, you know, if  
21 you want those. A lot of it=s just correspondence.

22 EXAMINER: Okay. Are the appendices titled  
23 Maryland Department of Transportation Turning Movement  
24 Report?

25 MS. QUINN: Yes.

1 EXAMINER: Or is that a new exhibit? That=s part  
2 of the other.

3 MS. QUINN: That=s part of the discussion paper  
4 appendix.

5 EXAMINER: Okay.

6 MS. QUINN: And that=s all I have.

7 EXAMINER: Okay. And that=s, well, what about  
8 this, okay. What about this Pedestrian Road Safety Audit?

9 MS. QUINN: I=m sorry. Yes.

10 EXAMINER: Full version of --

11 MS. MEAD: I=ll just continue my objection from  
12 the original 150 on the WPCA discussion paper since the  
13 appendixes, although we have appendix B, we don=t have the  
14 appendix -- we don=t have all the backup for those counts as  
15 far as the weight that they might deserve. So --

16 EXAMINER: I understand.

17 MS. QUINN: Okay. And I would just specify that  
18 appendix D, the critical lane volume level of service  
19 worksheets are all sheets from our internal streets. They  
20 have nothing to do with the Four Corners intersection which  
21 was the reason for introducing this exhibit to begin with.  
22 So, I can produce them if you=d like. I just didn=t think  
23 they were relevant to the --

24 EXAMINER: Well, Ms. Mead, now which exhibit are  
25 we talking about? Are we --

1 MS. MEAD: The last two pages of 166.

2 EXAMINER: Okay. Ms. Mead, do you want the two  
3 appendixes? The missing appendixes, appendices?

4 MS. MEAD: I don=t know if they=re critical or  
5 not. I don=t want to --

6 EXAMINER: Well --

7 MS. MEAD: I mean, our continued objection is that  
8 this is irrelevant to this discussion anyway but we don=t  
9 know the relevance of those appendixes if we don=t see them.  
10 You know, I guess it refers to --

11 EXAMINER: So, you=re objection to the admission  
12 of this exhibit because it=s missing --

13 MS. MEAD: I=m just continuing the same --

14 EXAMINER: No. Wait. Are you objecting because  
15 it=s missing the appendices or are you objecting because  
16 it=s irrelevant?

17 MS. MEAD: I was continuing my objection to the  
18 original 150, and I guess my new objection would be that  
19 it=s still missing some information. I don=t know whether  
20 that information is important or not. But --

21 EXAMINER: Okay. Ms. Quinn --

22 MS. MEAD: And I certainly don=t want to delay the  
23 hearing because of it.

24 EXAMINER: No.

25 MS. MEAD: We=ll take it as it.

1 EXAMINER: How soon can you get the missing  
2 appendices into the record?

3 MS. QUINN: Do you want them hand delivered or is  
4 electronic acceptable?

5 EXAMINER: Electronic is fine.

6 MS. QUINN: I can do it today, you know, tonight.

7 EXAMINER: Okay. Let=s do that and then when you  
8 review them --

9 MS. MEAD: If we can review what they even are  
10 today then we may just --

11 EXAMINER: I understand.

12 MS. MEAD: -- concede that they=re not irrelevant.

13 EXAMINER: So, I=m going to let it in subject to  
14 the proviso that Ms. Mead may want additional copies. Now,  
15 moving on. We=ll get to the Pedestrian Road Safety Audit,  
16 which is 167, full version.

17 MS. QUINN: Of Exhibit 150J.

18 EXAMINER: All right. Is there any other report  
19 in here?

20 MS. QUINN: No.

21 EXAMINER: Okay. So, 164 through 166 are  
22 admitted, and we will wait to see whether Ms. Mead wants to  
23 continue her objection as to the missing appendices on 167.  
24 All right. Mr. Leibowitz, you had finished your case.

25 MR. LEIBOWITZ: Yes.

1 EXAMINER: Correct? Okay. Ms. Mead?

2 MS. MEAD: Yes.

3 EXAMINER: We are moving on to rebuttal.

4 MS. MEAD: All right. And --

5 EXAMINER: Thank you, Ms. Quinn.

6 MS. QUINN: Thank you.

7 MS. MEAD: Actually, our first witness is a little  
8 less rebuttal, more followup from the hearing examiner=s  
9 questions regarding the operations of the site.

10 EXAMINER: Is that Ms. Memon?

11 MS. MEAD: Yes.

12 EXAMINER: Yeah. Come on up. Ms. Memon, you  
13 probably recall but you were placed under oath under  
14 penalties --

15 MS. MEMON: Yes, ma'am.

16 EXAMINER: -- and you=re still under oath.

17 MS. MEMON: Yes, ma'am.

18 EXAMINER: Thank you.

19 MS. MEAD: And as part of this testimony, we were  
20 planning to submit revised versions of the transportation  
21 management plan and statement operations making the changes  
22 discussed at the last hearing.

23 EXAMINER: All right.

24 MS. MEAD: Would you like me to just distribute  
25 those now so it doesn=t interrupt the --



1 EXAMINER: Well, I=m going to admit it as an  
2 exhibit. Do you have any objection?

3 MR. LEIBOWITZ: I haven=t seen it yet but I  
4 probably won=t have any objection.

5 EXAMINER: I have one question. Were these  
6 changes included in the notice of motion to amend? Are  
7 there any changes between this statement of operations --  
8 you submitted a letter and this office did a notice of  
9 motion to amend, and I will see if I can find the exhibit  
10 number. We need these electronically.

11 MS. MEAD: We=ll submit them today in burnt  
12 version.

13 EXAMINER: I was questioning whether we need a  
14 notice of motion to amend.

15 MS. MEAD: I=ll distribute them but our position  
16 is the nature of them is more clarification. They do  
17 include the confirmation of the maximum number of children  
18 outside at any given time to 25.

19 EXAMINER: I=m sorry. I just --

20 MR. RICHARDSON: Is it possibly Exhibit 100?

21 EXAMINER: It=s possibly -- when you get above  
22 100, you start to sort of lose track. Yes. That=s it.  
23 Good job. It=s 100. Well, what I=m going to ask you to do,  
24 Ms. Mead, is review -- when we issue a notice of motion to  
25 amend which is we typically look back to see if there is

1 anything to clarify. It may need a notice of motion to  
2 amend. That=s something we can leave the record open for  
3 but I=d like you to look back when you get the opportunity  
4 today --

5 MS. MEAD: Okay.

6 EXAMINER: -- along with your other list of things  
7 to review. I don=t think that necessarily requires a new  
8 hearing but I do have to give 10 days notice. All right?  
9 Okay. So, you=re going to admit that, and that=ll be, I  
10 think we=re up to 168.

11 MS. MEAD: 168. And there=s four documents here,  
12 compare version and a clean version of the statement of  
13 operations and a compare version and a clean version of the  
14 transportation management plan.

15 MR. LEIBOWITZ: How are they being numbered?

16 EXAMINER: 168A will be the clean version of --  
17 now I may change that name because clean version people may  
18 not --

19 MR. LEIBOWITZ: Right. As opposed to dirty  
20 version.

21 EXAMINER: Yeah. Right.

22 MS. MEAD: The unmarked. The final version, I  
23 guess.

24 EXAMINER: So, but for the time being. So, if you  
25 see a change in the exhibit list that=s what it is.

1 Statement of operations and B will be compared version. 169  
2 will be the -- what was the second thing?

3 MS. MEAD: The transportation management plan.

4 EXAMINER: Okay. A revised transportation  
5 management plan, and the A will be the clean version and B  
6 will be the compared. All right. All right. Now, I'm  
7 going to mark this as Exhibit 169. Okay. Go ahead.

8 MS. MEAD: All right. Ms. Memon, if you could  
9 please confirm the child/staff ratios for the maximum 76  
10 child enrollment, and we're referring to the enrollment  
11 that's listed in the statement of operations which has not  
12 changed as far as the infants to 4 years. If you could  
13 explain the staff ratios and the number of staff  
14 corresponding with each age group?

15 MS. MEMON: In my infant room, the ratio is three-  
16 to-one. So is the toddler. So, the capacity of infant is  
17 12 infants, so it's three-to-one ratio. Toddler is 12.  
18 Again, three to one ratio, and the 2 year old is six-to-one  
19 ratio. Twelve 2 year olds. 3 year olds, 20. Ten-to-one  
20 ratio, and 4 year olds, 22 in capacity. 10 to one ratio.

21 MS. MEAD: With those ratios, could you please  
22 clarify the number of staff then with each?

23 MS. MEMON: I'm going to have 15, adding the  
24 director.

25 MS. MEAD: Okay. Adding the director.

1 MS. MEMON: Uh-huh. Fourteen.

2 EXAMINER: So, there is going to be an on-site  
3 director?

4 MS. MEMON: Yes.

5 MS. MEAD: And if you could, please explain the  
6 role of the director at the site?

7 MS. MEMON: Director=s main goal is licensing the  
8 center, checking the staffing files, children files,  
9 answering the phones, receiving the parents, monitoring the  
10 parking place, the parking outside. That is everything  
11 comfortable and safe, and during the day, not the peak  
12 hours, the director=s also being a substitute in the class  
13 room, giving the staff lunch breaks, and maintaining the  
14 ratios in the class as to assign herself in the class.

15 MS. MEAD: Does the director need her own or his  
16 own office on the property?

17 MS. MEMON: Director will be needing an office in  
18 the building that she will be filing her staff papers,  
19 children=s meetings with the parents that come in.

20 MS. MEAD: Is that the desk in the main reception?

21 MS. MEMON: That will be the desk in the main  
22 hallway or main lobby, however the structure of the building  
23 is so she can have a view of outside parking spaces and also  
24 she=s comfortable to receive the parents as they are signing  
25 in and signing out. So, we=ll have check on that, too.

1 MS. MEAD: Okay. And does the director personally  
2 sit there and sign in and out every parent?

3 MS. MEMON: No. The parents do that when they  
4 come and register. That part is discussed with the parents  
5 that they have to sign in and sign out. But, of course, the  
6 director is monitoring as she's receiving the parents that  
7 they are doing that.

8 MS. MEAD: Is the director sitting at the desk  
9 during the whole morning receiving period?

10 MS. MEMON: She is answering the phone. She's  
11 available in the lobby where her office is. She's walking  
12 around the hallway greeting the children, greeting the  
13 parents, and also in the office, in and out, because the  
14 office area has to be all -- so much -- the setup should be  
15 such like that she can receive the parents, greet the  
16 children, answer the phones, check that they are signing in  
17 and out, everything is going comfortable and safe, and at  
18 the same time, she's seeing outside the traffic is okay in  
19 the parking lot.

20 MS. MEAD: And do you feel that there is enough  
21 time period and adequate part of the role to monitor the  
22 parking lot during the peak periods?

23 MS. MEMON: Yes. Because the parents are coming  
24 not at the same time. They are coming -- the whole  
25 enrollment is not in at 7:00. They come between 7:00 and

1 9:30, 10 o'clock. So, yes. It=s all comfortable situation.

2 MS. MEAD: Okay. And in your opinion and in your  
3 experience, does a director or the administrative person  
4 that=s heading up the center have time in their day to both  
5 monitor the parking lot and do their sign in and sign out  
6 and tend to other questions?

7 MS. MEMON: I would say yes.

8 MS. MEAD: Thank you. You just touched on it but  
9 one of the questions was whether staff worked staggered  
10 hours, and one of the proposed conditions from the staff  
11 report. Does the staff work staggered hours?

12 MS. MEMON: Yes. As the enrollment is coming in  
13 -- if the 12 infants -- I have assigned four staff member,  
14 as example, then the teachers start from 7:00, 7:30, 8:30,  
15 9:15. So, 7 o'clock start works till 4:00 with one hour  
16 break, and then 7:30 to 4:30, 8:30 to 5:30, and 9:15 to 6:15  
17 or 9:00 to 6:00. So, they do work at different shifts.

18 MS. MEAD: Thank you. And what if there=s more  
19 than the ratio of children that come in before someone  
20 starts their shift? How is it staffed if, let=s say,  
21 there=s five, more than four infants that come in before  
22 7:30?

23 MS. MEMON: Then again, it=s the director=s  
24 position to monitor. If infants, for some how, for some  
25 reason, is one extra, then she can move, shift the staff

1 from a toddler room or from a 2-year-old room or from a 3-  
2 year-old room for 15, 10 minutes to the other classroom. By  
3 law, you can merge the 3 and 4 together in the peak hours.  
4 So, those children can stay together between 7:00 to 8:30 if  
5 the numbers are okay, and you can use the extra staff on the  
6 other side?

7 MS. MEAD: And is this how you operate your  
8 existing three centers?

9 MS. MEMON: Yes. Burtonsville.

10 MS. MEAD: And per your previous testimony and per  
11 168A and B, if you could please confirm that you agree to  
12 the maximum number of children in the outside play area  
13 would be 25 children?

14 MS. MEMON: Twenty-five children at the max.

15 MS. MEAD: Okay. And for clarification, and this  
16 is attorney error from miscommunication from the last  
17 hearing but we did want to clear this up, is there a  
18 possibility for a special needs bus dropping of children at  
19 the facility even without before and after school care for  
20 children under 5 years old. Are there any possibilities  
21 that you would have special needs children in a bus dropping  
22 them off at the site?

23 MS. MEMON: It can happen.

24 MR. LEIBOWITZ: I=m sorry. It can or cannot? I  
25 didn=t hear the answer.

1 MS. MEAD: Can.

2 MS. MEMON: It can happen.

3 MS. MEAD: Sorry.

4 MS. MEMON: It can happen. The special need  
5 children at my College Park location, I do not have any  
6 special need child, and I do not have any special need child  
7 at my Beltsville location which is Maryland Farm Childway  
8 but at Burtonsville, I do have a special need children and  
9 buses do come. Not at peak time but they do come and  
10 receive the children, and drop the children and one of my  
11 staff member is always assigned outside to help them in the  
12 school bus and again, receive them.

13 MS. MEAD: And is the availability at the site for  
14 special needs children required by law for any daycare  
15 facility?

16 MS. MEMON: Yes.

17 MS. MEAD: And is the bus that will be dropping  
18 them off a county or a state school bus that could drop it  
19 off on the street and stop traffic?

20 MS. MEMON: I would -- on the sidewalk -- if we  
21 are looking about this location, it can come on the sidewalk  
22 and my staff can receive them.

23 MS. MEAD: But is it a school bus?

24 MS. MEMON: It=s a school bus, a smaller yellow  
25 version but it=s a school county bus.



1 MS. MEAD: Okay. It=s a county bus.

2 MS. MEMON: Yes.

3 MS. MEAD: And how many special needs children do  
4 you have in the Burtonsville location?

5 MS. MEMON: Right now, I do have three.

6 MS. MEAD: Three? And out of a total of how many  
7 children?

8 MS. MEMON: 275.

9 MS. MEAD: 275. And you mentioned that you know  
10 when they=re going to be arriving and departing?

11 MS. MEMON: Yeah. The timing is given to us by  
12 the parents that the buses are going to come at this time  
13 and drop off at this time.

14 MS. MEAD: Thank you. If you could please, per  
15 your testimony in April, the hearing examiner wanted us to  
16 confirm that will the food be delivered to the site from  
17 your other facility? From Burtonsville?

18 MS. MEMON: From our main location, the  
19 Burtonsville location. All the trucks goes there from Sysco  
20 and Green Springs. So, we are going to be bringing from  
21 there.

22 MS. MEAD: Bringing from there?

23 MS. MEMON: Uh-huh.

24 MS. MEAD: So the trucks will go to the  
25 Burtonsville location and you=ll bring --

1 MS. MEMON: To the Burtonsville location, and we  
2 are going to have the food, one of my staff member or  
3 myself, we are going to bring the food over.

4 MS. MEAD: And when will you be delivering this  
5 food to the Four Corner=s facility?

6 MS. MEMON: Meaning what? During the day? Over  
7 the weekend it can happen.

8 MS. MEAD: Would it be during the peak periods?

9 MS. MEMON: No. Not at the peak period. Everyone  
10 is busy.

11 MS. MEAD: For the maximum of the 15 staff  
12 members, how many do you anticipate will be parking on the  
13 site?

14 MS. MEMON: I would say two.

15 MS. MEAD: How would the rest of the employees,  
16 would you predict, be getting to the facility?

17 MS. MEMON: Why I=m saying that because my  
18 experience of College Park and Beltsville location. The  
19 Metro station is right there, and at College Park location,  
20 I have none. They all take public transportation. At  
21 Maryland Farm, I have only two staff members. They have the  
22 cars. Otherwise, they take Metro.

23 MS. MEAD: How about at your Burtonsville location  
24 which is not near a Metro as you just testified?

25 MS. MEMON: Well, all of my teachers -- I think

1 seven I provide their transportation at Briggs Chaney=s bus  
2 stop. My van goes and brings seven to eight staff members  
3 from there. The rest of them have their own cars.

4 MS. MEAD: Okay. So --

5 MS. MEMON: So, if the Metro station is available,  
6 I think that it=s easier to do the staffing and the staff do  
7 prefer to come in the Metro. And also they do the  
8 carpooling.

9 MS. MEAD: And by Metro station do you mean the  
10 subway station or do you mean the bus stops? Do they take  
11 the bus or --

12 MS. MEMON: The bus stop. The College Park bus  
13 stop. The Beltsville bus stop.

14 MS. MEAD: Do you anticipate any parking issues  
15 with the employees that will park on the site and the  
16 maximum 76 children enrolled with having 28 parking spaces  
17 on the property even during the peak period?

18 MS. MEMON: I would say it=s plenty. If I have  
19 parents coming in, I would say even at the peak period, four  
20 to six parents will be at the same time. Not more than  
21 that.

22 MS. MEAD: And are you familiar with the revised  
23 T&P submitted as Exhibit 169A with the clarification role of  
24 the transportation coordinator and the special events?

25 MS. MEMON: Yes.

1 MS. MEAD: And although your testimony just  
2 recently, you don=t predict it to be an issue, but, if  
3 necessary, would you agree with the T&P goals to encourage  
4 staff to use transit and to invite Montgomery County  
5 Department of Transportation to provide commuting  
6 information?

7 MS. MEMON: Of course. I don=t have any problem.  
8 They can come and talk to us.

9 MS. MEAD: You can speak to the --

10 MS. MEMON: They can come and talk to us. I do  
11 not have any problem. But, I don=t feel that there should  
12 be any issue about that.

13 MS. MEAD: And would you invite them personally if  
14 you find, against your projections, you have a significant  
15 amount of staff driving their own cars?

16 MS. MEMON: Of course. That=s fine. You can have  
17 a workshop. Coming in and talking to them.

18 MR. LEIBOWITZ: I=m having trouble hearing the  
19 witness.

20 MS. MEAD: If you could speak up, please.

21 EXAMINER: Yeah. I am a little, too. Do you mind  
22 speaking up a little? Go ahead.

23 MS. MEMON: We talk soft to the children. Yes.  
24 Of course. I do not have any problem. We can set up a  
25 workshop. Then invite them. They can come and talk to my

1 staff, even to my parents.

2 MS. MEAD: Okay. Even to your parents.

3 MS. MEMON: Yes.

4 MS. MEAD: And would you take other measures to  
5 encourage staff to take the bus or carpool if you found  
6 there was starting to be a parking problem on this?

7 MS. MEMON: At the hiring time, we can put that  
8 information in my hiring package, and also at enrolling  
9 time, we can put that as a small flyer that we do prefer  
10 that if you=ll take the public transportation that will be  
11 easier. To my parents, I can -- to my teachers, I can  
12 insist. But, to my parents, I can encourage them.

13 MS. MEAD: So, you do have the control with your  
14 staff as far as insisting?

15 MS. MEMON: Yes. Of course.

16 MS. MEAD: And for special events, in particular,  
17 can you confirm that they=ll be staggered by age group to  
18 accommodate parking?

19 MS. MEMON: The special events is always separated  
20 because each age group do perform at a different level. So,  
21 if there is a holiday performance or mother=s day or  
22 father=s day cookout, even the evaluation sheets when they  
23 go out, we do at a different time. Just now, just like  
24 right now, we are just done with our holiday performance  
25 sing along. So, the infants and the toddlers were

1 performing at a separate time. 2s were performing separate,  
2 and 3s and 4s. They all were separate so that there is not  
3 a parking concern outside. Even at my Burtonsville  
4 location. So, we do all the events all at different times  
5 so that everything is safe and comfortable.

6 MS. MEAD: And for the transportation management  
7 plan would you or the transportation coordinator be able to  
8 regulate the staff parking on site to make sure that there  
9 is adequate parking available for -- even though you have  
10 the staggered special events to make sure the staff don't  
11 all drive that day and park?

12 MS. MEMON: Yeah. We can announce that and the  
13 teachers can work around us.

14 MS. MEAD: Those are the questions I have for Ms.  
15 Memon to hopefully address the follow-up questions the  
16 hearing examiner had from December.

17 EXAMINER: Okay. I just have a few questions.

18 MS. MEMON: Sure.

19 EXAMINER: I think it came up last time on the  
20 special events issue. There was some testimony that you  
21 would have plans for overflow parking if, for some reason,  
22 you could not accommodate everyone on site because, as you  
23 know, part of the issue here is overflow parking. Do you  
24 have backup? Is there a backup plan in case all your best  
25 attentions go awry or there was testimony --

1 MS. MEMON: If that happens.

2 EXAMINER: Yeah. There was some testimony last  
3 time where they said you would have a backup plan if too  
4 many people arrived at the site, and my question is what is  
5 that backup plan?

6 MS. MEMON: I would say there should be always a  
7 backup plan, and once you are there, once the setup is  
8 there, then if you can get help from the community or  
9 there=s a church right on the side or there=s a small lawn  
10 on the side, you can get that as a backup plan. I do not  
11 see that it will happen at this site, but if it happens, you  
12 can always go across the street. There=s a parking lot and  
13 parents can use that. There=s a church there. We can talk  
14 to them prior --

15 EXAMINER: I understand. So what you=re --

16 MS. MEMON: -- if there is overflow.

17 EXAMINER: They can=t use it though, see. They  
18 can=t use that lot across the street.

19 MS. MEMON: If they cannot use that. That=s what  
20 you=re saying?

21 MS. MEAD: I=ll have a follow-up question if you--

22 EXAMINER: Okay. What I=m asking is there was  
23 testimony last time that if too many people showed up to the  
24 site, and I know that you believe that=s an unlikely  
25 scenario, but if too many people showed up at the site,

1 there would be a place or a shuttle or something where the  
2 overflow parking could be directed. But --

3 MS. MEMON: I can only suggest that my  
4 Burtonsville location. They can go and park there, and my  
5 van can bring them on the site for that occasion.

6 EXAMINER: Okay.

7 MS. MEMON: They can do that. I have two vans,  
8 and I can help the parents in that way. It=s not that far.

9 EXAMINER: Okay.

10 MS. MEMON: If that happens.

11 EXAMINER: Uh-huh.

12 MS. MEMON: So, I can project that.

13 EXAMINER: And you=re saying that the staggered  
14 times will be part of the contract with the parents?

15 MS. MEMON: Yes.

16 EXAMINER: Okay.

17 MS. MEMON: For the special events.

18 EXAMINER: No. No. No.

19 MS. MEMON: For the --

20 EXAMINER: Your traffic management plan says, on  
21 page 2, it says that you are going to, in the contract with  
22 the parents --

23 MS. MEMON: With the parents. Yes.

24 EXAMINER: -- stagger times.

25 MS. MEMON: Yes. There is all this on my



1 registration. There is a time to just give us an average  
2 time what time the children are coming in. Who=s coming in  
3 at 7:00. Who=s coming at 7:15. There=s always a column or  
4 a para in my registration so that it=s easier for me to do  
5 the staffing also that that many children are coming to have  
6 some kind of feeling that what time the children are coming  
7 so I can have the staff at the same time and that helps me  
8 for the parking, too.

9 EXAMINER: Okay.

10 MS. MEMON: That that many cars are going to be  
11 outside if that many children are there. So, that much of  
12 staff should be available at certain time.

13 EXAMINER: Okay. Mr. Leibowitz. Are you  
14 finished? Aside from the questions on redirect, you=re  
15 finished with your questions.

16 MS. MEAD: With my questions. I had some follow-  
17 up from yours or it can just wait until --

18 EXAMINER: Why don=t we wait. You can follow-up  
19 from everybody=s.

20 MS. MEAD: Okay.

21 EXAMINER: Mr. Leibowitz, your turn.

22 MR. LEIBOWITZ: Thank you. Could you tell me,  
23 again, the staggered staff times? I didn=t hear the answer.

24 MS. MEMON: The staff coming in?

25 MR. LEIBOWITZ: Yes.

1           MS. MEMON: My staff is assigned as a classroom  
2 just like if you take one class as an infant. One staff  
3 member is going to come at 7:00. The next coming in and  
4 joining the classroom at 7:30, 8:00 or 8:30, and then 9:00  
5 to 6:00.

6           MR. LEIBOWITZ: And then --

7           MS. MEMON: So, this means that is one classroom  
8 coming in. So, we are talking about one, two, three, four,  
9 five classrooms. So, five staff members are going to be  
10 coming at 7:00. The next set of staff is going to be coming  
11 at 7:30. The next staff is going to be, the next staff for  
12 all different age groups are going to come at 8:00 and the  
13 last batch of each age group separately is going to come at  
14 9:00, and they are going to be joining as the numbers are  
15 adding up in the morning at peak time.

16           MR. LEIBOWITZ: I understand. So, when the staff  
17 members come at 7:00, for example.

18           MS. MEMON: Uh-huh.

19           MR. LEIBOWITZ: When do those staff members leave?

20           MS. MEMON: The one who come -- eight hours a  
21 shift. So, 7:00 to 4:00. 7:30 to 4:30.

22           MR. LEIBOWITZ: I see.

23           MS. MEMON: 8:00 to 5:00. 9:00 to 6:00.

24           MR. LEIBOWITZ: So, everyone has an eight hour  
25 shift?

1 MS. MEMON: Yes.

2 MR. LEIBOWITZ: And do they get a --

3 MS. MEMON: One hour lunch break.

4 MR. LEIBOWITZ: They get a one hour lunch break.

5 MS. MEMON: Yes.

6 MR. LEIBOWITZ: And the director would fill in --  
7 let me back up. And so, there=s not a staff setting where a  
8 staff member comes in, let=s say, from, I don=t know. 7:00  
9 to 3:00, and then there=s a second one who=s overlapping  
10 from, you know, 10:00 to 6:00. I=m not asking a question,  
11 though. I guess, my question is are there ever times when  
12 there are more than 15 staff members on site due to an  
13 overlap in shifts?

14 MS. MEMON: I have to assign the staff related to  
15 the staff ratio in the classrooms. So, there should not be  
16 any overlap.

17 MR. LEIBOWITZ: So, no one ever, for example, a  
18 staff come at a certain time and then their shift is over  
19 before but before the -- because you can=t just have the  
20 teachers, a whole set, leave a classroom and then another  
21 set of teachers, whole set, will come in to a classroom.  
22 There has to be some continuity. Right?

23 MS. MEMON: The way we do the staffing, again, as  
24 I was talking earlier, that as my children are coming in.  
25 So, the staff leaves at 4:00. At that time, we do

1 anticipate that two of my babies or two of my toddlers or  
2 two of my pre-K are leaving. So, as the parents sign in,  
3 their actual forms at registration time, you do have a  
4 picture that this many children you are going to be having.

5 MR. LEIBOWITZ: Right.

6 MS. MEMON: And as I said, in the afternoon peak  
7 time also that if the 3s and 4s numbers are down, we are  
8 able to merge the class and then the extra staff is  
9 available if a child is extra in an infant room. So, we do  
10 do the staffing during the day and every day like that in  
11 the normal operation day of a daycare or a child care.

12 MR. LEIBOWITZ: And then the director fills in for  
13 all of the staff lunch breaks?

14 MS. MEMON: Not really. Some of the staff members  
15 do take their lunch in the classrooms. Some, just like for  
16 the infants and toddlers, directors do go there. But, for  
17 the 3s and 4s we are fine at the nap time.

18 MR. LEIBOWITZ: So, for 3s and 4s, they=re lunch  
19 break is while the kids are sleeping?

20 MS. MEMON: Uh-huh. Their lunch breaks are always  
21 between 1:00 and 3:00 for the older age group. For the  
22 infant and toddler is so much of flexibility to the  
23 children. They do not take -- we don=t give them a routine.  
24 We follow the baby=s routine. So, some babies are -- it=s  
25 an operation kind of time in that kind of setup.

1           MR. LEIBOWITZ: How many, okay. Now, there isn't  
2 a room for the director to work in. He or she would have,  
3 basically, a work station, a desk in the hallway. Is that  
4 correct?

5           MS. MEMON: The office is set up in the hallway.  
6 But, she has all open door kind of setup. So, the  
7 availability for the parents and the children is there.  
8 It's not a closed office the director is going to sit down.

9           MR. LEIBOWITZ: Right. It's not a closed office.

10          MS. MEMON: No. It's not a closed office.

11          MR. LEIBOWITZ: Okay. Now, there's some times  
12 where parents have issues that they want to discuss with the  
13 director. Right?

14          MS. MEMON: Uh-huh.

15          MR. LEIBOWITZ: And there are some times where  
16 teachers may have issues they want to discuss with the  
17 director.

18          MS. MEMON: Uh-huh. Uh-huh.

19          MR. LEIBOWITZ: And just for the record, if you  
20 could say yes.

21          MS. MEMON: Uh-huh.

22          MR. LEIBOWITZ: If you could --

23          MS. MEMON: Oh. I'm sorry. Yes.

24          MR. LEIBOWITZ: Thank you.

25          EXAMINER: We're not taking naps today.

1           MR. LEIBOWITZ: And sometimes those discussions  
2 may be personal discussions. Right?

3           MS. MEMON: We do use our kitchen area for that.

4           MR. LEIBOWITZ: So, the kitchen would be used for  
5 private meetings.

6           MS. MEMON: Yes. We do that, and parents are  
7 quite comfortable. We pull a few chairs, and we sit down,  
8 and the meetings, we have the meetings there.

9           MR. LEIBOWITZ: Okay. And so during a private --

10          MS. MEMON: It just -- I=m sorry to interrupt.

11          MR. LEIBOWITZ: Okay.

12          MS. MEMON: I=m sorry.

13          MR. LEIBOWITZ: So, during a private meeting in  
14 the kitchen, the director would be in the room with the  
15 doors closed. Right?

16          MS. MEMON: Yes.

17          MR. LEIBOWITZ: And it=s fair to say that most  
18 parents who have children in daycare are working parents.  
19 Right?

20          MS. MEMON: Yes.

21          MR. LEIBOWITZ: And they at least feel that  
22 they=re very busy. The parents feel that the parents are  
23 busy.

24          MS. MEMON: Uh-huh. Yes.

25          MR. LEIBOWITZ: And so sometimes the parents want

1 to meet either at a drop off or a pickup time because that=s  
2 when they=re already at the school. Right?

3 MS. MEMON: Yes.

4 MR. LEIBOWITZ: Okay. And if they were to meet  
5 during those times in a closed door way and the director  
6 would be in the kitchen with the parents.

7 MS. MEMON: Yes.

8 MR. LEIBOWITZ: Okay. Now, you said that during  
9 the -- the director sounds like she or he would have a lot  
10 of responsibilities, particularly during the peak times.  
11 Right?

12 MS. MEMON: Yes.

13 MR. LEIBOWITZ: The director is greeting people.  
14 The director=s in the hallway.

15 MS. MEMON: Yes.

16 MR. LEIBOWITZ: The director=s answering the  
17 phone. The director=s monitoring the traffic.

18 MS. MEMON: Yes.

19 MR. LEIBOWITZ: Potentially meeting with parents.

20 MS. MEMON: The meetings are always assigned not  
21 at the peak time. If the parent bring up concern, my  
22 meetings are at a different time. I do give them a time  
23 that we can meet at 2 o'clock or 3 o'clock or if they=re  
24 regular pickup is at 5:00, they do come at 3:00 to have a  
25 meeting. But, in my care, I have very few meetings with

1 parents. I have more meetings with the staff.

2 MR. LEIBOWITZ: I won't address that. So, let's  
3 assume for a moment that the parents violate the TMP because  
4 they, for whatever reason they have, they decided they're  
5 going to park on the street in the permanent parking or  
6 they're going to -- it doesn't matter. That they do  
7 something that's in violation of the TMP. What would be the  
8 school's response to that?

9 MS. MEMON: You have to reinforce your policy.

10 MR. LEIBOWITZ: How?

11 MS. MEMON: By talking to them at that point or,  
12 again, circulating your policy.

13 MR. LEIBOWITZ: And does a repeated violation  
14 result in expulsion from the school or what would be the  
15 consequence?

16 MS. MEMON: I wouldn't see that happening because  
17 parents are also very careful. They are dealing with their  
18 child, and I don't see it happening. But, if it happens,  
19 then we have to just reinforce, talk to them, and again,  
20 circulate the same policy, and that do give you the results,  
21 should give you the results.

22 MR. LEIBOWITZ: Okay. But, my question is what if  
23 it doesn't? What if you have a recalcitrant parent?

24 MS. MEMON: Keep on talking to them and  
25 reinforcing.



1           MR. LEIBOWITZ: What about a staff member? A  
2 staff member who says I can=t take the bus. It would take  
3 me three hours from my house to take the bus. Just because  
4 you=re having a special event that day, and you=re expecting  
5 to have 30 family and parents, you know, come. I need to  
6 drive my car. What do you do then?

7           MS. MEMON: If it happens with a staff, that is  
8 already discussed with the staff. She is not going to do  
9 it. Then, I have to change my staff from one location to  
10 the other location, and I have to bring the staff who do  
11 follow for the convenient of the location.

12          MR. LEIBOWITZ: So, if the staff member wouldn=t  
13 or couldn=t follow the TMP, in particular, on a special  
14 event day, then that staff member would be transferred to  
15 another facility?

16          MS. MEMON: Uh-huh. They have to, that has to be  
17 all discussed ahead of time and that if these policies are  
18 not followed, we will give you a position at the other place  
19 because this is strictly that we have to follow these rules.  
20 To accept a position to start with, they have to sign up a  
21 contract with us on the policies of the center.

22          MR. LEIBOWITZ: I think that you had testified  
23 previously, we had talked about or there had been some  
24 testimony about that some parents may bring their children  
25 using public transportation. Do you still anticipate that?

1 MS. MEMON: Yes. At this location? Yes.

2 MR. LEIBOWITZ: Okay. And if they were to use  
3 public -- and by that, you mean a public bus. Right?

4 MS. MEMON: Bus. Yes.

5 MR. LEIBOWITZ: A Metro bus?

6 MS. MEMON: Yes.

7 MR. LEIBOWITZ: And so either going or coming,  
8 they would have to cross University Boulevard to get to the  
9 school. Right?

10 MS. MEMON: Yes.

11 MR. LEIBOWITZ: If parents, after some time doing  
12 that, decided that it was hazardous to cross University  
13 Boulevard with their young children, in your experience, do  
14 you think parents would continue to do that?

15 MS. MEMON: If they're uncomfortable with their  
16 children then they won't be taking this care of Childway at  
17 that location.

18 MR. LEIBOWITZ: You said they wouldn't use  
19 Childway or they wouldn't use public transportation?

20 MS. MEMON: They can do both. They can bring  
21 their own vehicle to come in or they will say this is  
22 uncomfortable and they will try and seek something out  
23 different.

24 EXAMINER: While Mr. Leibowitz is taking a break,  
25 do you understand that one of the possible conditions that

1 is being discussed in this hearing is that if you can=t --  
2 that there should not be overflow parking on the street, and  
3 if you cannot implement that, if you cannot say there=s not  
4 going to be overflow parking, you could lose your special  
5 exception, and I just want to make sure that you understand  
6 when you=re dealing with the parents that that is a  
7 condition that is being discussed in this case that if you  
8 can=t abide by that commitment that you could lose the  
9 special exception.

10 MS. MEMON: I understand.

11 EXAMINER: Okay. Mr. Leibowitz, I jumped in. Ms.  
12 Mead, you=ll get a chance to --

13 MR. LEIBOWITZ: I just had one or two other, two  
14 or three other questions. In regard to the overflow parking  
15 issue, Ms. Memon, you had suggested that perhaps that would  
16 end up being at your Burtonsville location. Is it fair to  
17 say that your Burtonsville location is approximately 10  
18 miles from this location?

19 MS. MEMON: I would say yes.

20 MR. LEIBOWITZ: Okay. And I was, on the last  
21 topic, I was a little bit confused in regard to the special  
22 needs bus. I didn=t understand whether you said it would be  
23 stopping at the curbside to let students on and off or it  
24 would be going into the parking lot to let students on and  
25 off or you don=t know. It could be either.

1 MS. MEMON: Right now, I really do not know how  
2 many children I will have or will I have it or not at that  
3 location. But, if I do, then it=s all the public school bus  
4 letting us know that they are going to come on the side or  
5 they are going to come on the curb.

6 MR. LEIBOWITZ: The school bus would let you know.

7 MS. MEMON: The school bus is going to let us know  
8 where they=re stop is going to be.

9 MR. LEIBOWITZ: Okay. And you won=t have any idea  
10 on that. You could have zero. You could have five special  
11 needs kids.

12 MS. MEMON: I don=t know.

13 MR. LEIBOWITZ: It=s unpredictable.

14 MS. MEMON: Yes. I do not know.

15 MR. LEIBOWITZ: I don=t have any other questions.  
16 Although, I didn=t get a chance to really closely look at  
17 the revised TMP. But, I don=t --

18 EXAMINER: Well, I don=t want to leave too many  
19 threads open. Why don=t we take a 10 minute break, and you  
20 can look at that and then continue with any questions you  
21 have based on the revised TMP because I=d like to try to  
22 clean as much up as we can.

23 MR. LEIBOWITZ: I agree.

24 EXAMINER: Ms. Mead, during the 10 minute break,  
25 this is, I think, Exhibit 159 which is the letter from the -

1 - it=s a letter relating to 219 West University Avenue.  
2 That=s in the file. I think it=s in the file. Yeah. I=m  
3 going to let you review it. I=ll say in advance, to shorten  
4 the hearing, that I=m not very persuaded already by that  
5 piece of property as being a comparable for the size of this  
6 facility. But, you can take a look at it while we=re on the  
7 10 minute break, and you can take a look at the revised  
8 statement of operations. Technically, the statement of  
9 operations, when you revise it, there are in my estimations  
10 some material changes in it, and because when I reread the  
11 testimony, there was some contradictory testimony between  
12 you and Mr. Starkey as to -- and it=s not your fault.  
13 Nobody=s fault. It=s just I=m not sure that everybody had  
14 flushed out the details of how the -- I=m not talking about  
15 the trip counts or any of your traffic stuff. I=m talking  
16 about the transportation management plan. Okay? So, I=m  
17 not here to cast doubt on anyone=s ability. But, I do think  
18 that they are more than clarifications. I think that they  
19 are an amendment. So, we=re going to do a notice of motion  
20 to amend. That doesn=t necessarily mean another hearing.  
21 It just means that if I have to send the notice out and  
22 people can object. There=s 10 days to respond, and even  
23 that, depending on what comes in, I don=t think that, you  
24 know, that still doesn=t necessarily mean we have another  
25 hearing. But, the change from may to will as far as the

1 contract goes. There are some other things and I can go  
2 through them if you want but I do think there are some  
3 substantive change. The clarification of the maximum number  
4 of children. That=s different from what was presented to  
5 the planning board. So, just as, you know, I think those  
6 need a notice of motion to amend. All right? And, again,  
7 I=m not casting dispersions on anyone. I=m not sure you  
8 were as familiar with the transportation management plan  
9 aspect. So, with that, we=re going to take -- Exhibit 159  
10 is here. You=ll read the statement of operations. We=ll  
11 come back at 11:20. All right? Thank you.

12 (Off the Record)

13 (On the Record)

14 EXAMINER: We are back on the record. Ms. Mead,  
15 do you have any objection to 159, Exhibit 159, coming in the  
16 record?

17 MS. MEAD: Not for the weight it deserves.

18 EXAMINER: Okay.

19 MS. MEAD: I do think if we keep the record open  
20 today, I would request there be some instructions as far as  
21 limiting the testimony. Anything submitted afterwards to be  
22 responsive since we seem to be getting --

23 EXAMINER: Yes.

24 MS. MEAD: -- what I would consider testimony keep  
25 coming into the record.

1 EXAMINER: Much moving. Yes. I understand your  
2 objection. Mr. Leibowitz, did you have a chance to review  
3 the revised traffic management report and the revised --

4 MR. LEIBOWITZ: Yes.

5 EXAMINER: Do you have any, after that review, do  
6 you have any follow-up questions for this witness?

7 MR. LEIBOWITZ: I have just a couple. Ms. Memon,  
8 do any of your other locations have a traffic management  
9 plan?

10 MS. MEMON: No.

11 MR. LEIBOWITZ: Okay. And in addition to special  
12 events will there be staff meetings that are outside the  
13 normal operating hours?

14 MS. MEMON: No. Not outside of the hours.

15 MR. LEIBOWITZ: So, there would be staff meetings,  
16 though, sometimes.

17 MS. MEMON: Of course. There are staff meetings  
18 at the lunch breaks.

19 MR. LEIBOWITZ: So, while the staff is meeting,  
20 who=s watching the children?

21 MS. MEMON: The way I do the staff meeting is, and  
22 the way that the locations of mine is that I do go in the  
23 infants= room and sit with the teachers and have a staff  
24 meeting there. The two separate, the three separate, and  
25 four separate. I take myself and sit with my teachers in

1 the classroom while the children are taking a nap.

2 MR. LEIBOWITZ: So, you would never have a staff  
3 meeting with staff from more than one age group at a time?

4 MS. MEMON: No. Not at the same time. I cannot.

5 MR. LEIBOWITZ: And other than staff and parents  
6 are there ever, and I suppose deliveries, are there any  
7 other people who come on site like volunteers or vendors,  
8 who we haven't discussed, picture people, I don't know, the  
9 multitude of different types of people who might come to a  
10 daycare. What's your anticipation of those types of things?

11 MS. MEMON: If there is in house field trip just  
12 like if a magic show is happening or if Creative Image  
13 pictures people are coming to take the photo shoot of the  
14 children. They do not come at the peak time. They do come  
15 in the middle of the day to do those events.

16 MR. LEIBOWITZ: And so your anticipation is then  
17 that there would be adequate parking for them in the 28  
18 spots?

19 MS. MEMON: If they are coming at the middle of  
20 the day to have that session done or that activity done,  
21 yes.

22 MR. LEIBOWITZ: Okay. And then of the 28 spots,  
23 do you anticipate that at least two of them will be reserved  
24 for handicapped parking?

25 MS. MEMON: There should be -- I think that is



1 necessary. There should be one handicapped parking.

2 MR. LEIBOWITZ: You think just one?

3 MS. MEAD: We have another witness who can  
4 address --

5 MR. LEIBOWITZ: Okay.

6 MS. MEAD: -- the parking.

7 MR. LEIBOWITZ: And the director. The TMP puts  
8 the burden on the director to enforce the TMP. Right?

9 MS. MEMON: The director=s responsibility is to?

10 MR. LEIBOWITZ: Enforce the TMP.

11 MS. MEMON: Yes.

12 MR. LEIBOWITZ: Okay. I don=t know if you have  
13 anyone in mind for director at the moment, but would you  
14 anticipate that that person would have any experience in  
15 enforcing TMPs?

16 MS. MEMON: We will have to hire the director who  
17 do understand all our policies to operate that center.

18 MR. LEIBOWITZ: Is it fair to say it=s somewhat  
19 unusual for a daycare to have to address the needs of  
20 residential neighbors in addition to all the other  
21 responsibilities of a day care?

22 MS. MEMON: I do not understand. You=re like  
23 hiring someone else to come in?

24 MR. LEIBOWITZ: The director and potentially you  
25 and your husband, will have this, in addition to all your

1 other responsibilities, will have this responsibility of  
2 dealing with and addressing concerns and communicating with  
3 residential neighbors. Right?

4 MS. MEMON: Yes.

5 MR. LEIBOWITZ: Okay. Is it fair to say that that  
6 duty, that responsibility, is not typical for a daycare  
7 provider?

8 MS. MEMON: I would say no because we do talk to  
9 different issues with our staff and parking issues -- the  
10 brief answer is no. It=s not typical.

11 MR. LEIBOWITZ: We may have just covered this a  
12 little bit before but just to be clear. Will there be any  
13 contractual requirement for the staff not to drive or it=s  
14 just sort of a verbal understanding?

15 MS. MEMON: At this location, I have to put it in  
16 the contract that we do want you to take the Metro bus.

17 MR. LEIBOWITZ: Okay.

18 MS. MEMON: Because the way the setup of the  
19 parking spaces are.

20 MR. LEIBOWITZ: I have no further questions.

21 EXAMINER: Okay. Ms. Mead.

22 MS. MEAD: Thank you. Ms. Memon, on special  
23 events, you just mentioned that you would have some control  
24 over the employees as far as encouraging them to take the  
25 bus on a regular, daily basis. But, for special events

1 would you be able to accommodate them parking at your  
2 Burtonsville site and transporting them down to the  
3 facility?

4 MS. MEMON: Yes.

5 MS. MEAD: And you had mentioned that for special  
6 events, you would stagger them to make sure there=s no  
7 overlap between the classrooms, the age groups?

8 MS. MEMON: The events. Yes.

9 MS. MEAD: And, in your opinion, that the parking  
10 would be adequate for the staggered age group events?

11 MS. MEMON: Yes.

12 MS. MEAD: If you anticipated that there would be  
13 more cars than parking spaces, would you be able to make  
14 special arrangements for the staff and/or parents?

15 MS. MEMON: I=m going to be able to.

16 MS. MEAD: And would you try and accommodate the  
17 parents at your Burtonsville site or another location?

18 MS. MEMON: The existing parents to Burtonsville  
19 location. Yes. I can to transporting.

20 MS. MEAD: The parents for this Four Corners  
21 facility. Do you make special arrangements, if necessary,  
22 for special events?

23 MS. MEMON: Yes. I can.

24 MS. MEAD: And do you agree to the requirements in  
25 the TMP to incorporate the TMP as part of the employee

1 contract and the parent=s information?

2 MS. MEMON: Yes.

3 MS. MEAD: And if a parent isn=t complying with  
4 the TMP, you noted you would first speak with them. If they  
5 continue to repeat violate and you don=t get results, would  
6 you terminate the relationship with that client?

7 MS. MEMON: I have to. I will give them the  
8 choice that you do Metro bus or we are sorry that we cannot  
9 accommodate. So, find some other site, comfortable site,  
10 for their child.

11 MS. MEAD: And are having people who come in the  
12 middle of the day to the site, you mentioned an in-house  
13 field trip or a photo vender, is that typical for most  
14 daycare operations?

15 MS. MEMON: Yes.

16 MS. MEAD: And, although you don=t have any TMPs  
17 for your current three locations of child care centers, are  
18 you confident the director can handle the duties, the  
19 regular duties, as well as being the transportation  
20 coordinator?

21 MS. MEMON: Yes.

22 MS. MEAD: Thank you. Those are the follow-up  
23 questions I have.

24 EXAMINER: Okay. Ms. Memon, thank you.

25 MS. MEMON: Thank you.

1 EXAMINER: You may be excused.

2 MS. MEMON: Thank you very much.

3 EXAMINER: And we are ready for your next witness.

4 MS. MEAD: We were going to call Ms. Currano.

5 EXAMINER: Hi. Ms. Currano, you are still under  
6 oath.

7 MS. CURRANO: Thank you.

8 EXAMINER: And you're still qualified as an expert  
9 in civil engineering.

10 MS. CURRANO: Thank you.

11 EXAMINER: Okay.

12 MS. MEAD: The exhibit references handy. Ms.

13 Currano, are you familiar with the revised special  
14 exceptions site plan submitted into the record this fall as  
15 Exhibit 101-1 of the revised special exceptions site plan?

16 MS. CURRANO: Yes. Yes. I am.

17 MS. MEAD: What was your involvement, if any, with  
18 the revised special exception plans?

19 MS. CURRANO: It's the standard practice for our  
20 office that if there are revisions to a drawing that we've  
21 already done that John and I get together and we discuss how  
22 that would, the revisions would impact the storm water.

23 EXAMINER: When you say John, is that Mr. Sekerek?

24 MS. CURRANO: Oh. Pardon me. Yes. John Sekerek  
25 at my office. I apologize.

1 EXAMINER: Sekerek. I=m sorry.

2 MS. CURRANO: Yes. It=s standard that we all get  
3 together to discuss what the revisions would impact each of  
4 our industries and mine would be storm water.

5 MS. MEAD: And did you prepare the revised storm  
6 water management plan for the revised site plan?

7 MS. CURRANO: Yes. I did. It=s there. It says  
8 Exhibit 101 there. That=s what we had prepared. I think it  
9 might be 153.

10 MR. LEIBOWTIZ: Okay.

11 MS. MEAD: 153. The revised storm water  
12 management exhibit.

13 MS. CURRANO: Right. I guess, yeah. 153.

14 EXAMINER: Wait. Mr. Sekerek, what are you -- is  
15 that 101?

16 MS. CURRANO: No. That is 153.

17 EXAMINER: Is that previously marked?

18 MS. CURRANO: That was not previously marked.

19 EXAMINER: I=m sorry. It=s just an error.

20 MR. SEKEREK: You misunderstood the exhibit  
21 reference.

22 EXAMINER: Okay. I just want to make sure.

23 MS. MEAD: Is the plan up there, Exhibit 153, is  
24 that your revised storm water management plan?

25 MS. CURRANO: Correct. That is my revised storm

1 water management plan.

2 MS. MEAD: If you could, please review the plan  
3 and any changes from your previous plan in your previous  
4 testimony?

5 MS. CURRANO: I'll gesture, and I'll try to  
6 remember to say where on the plan it is.

7 MS. MEAD: Thank you.

8 MS. CURRANO: I do know we have a reduction in the  
9 impervious area, quite a significant reduction in the  
10 impervious area, and the entire site was rotated 90 degrees.  
11 So, previously, we had a large storm water swell that went  
12 along Gilmore Drive. That one now goes along Burnett  
13 Avenue and that provides storm water management for mostly  
14 the parking lot and a portion of the rooftop that drains  
15 towards Burnett Avenue at this time, and then we continue to  
16 have dry wells material, underground gravel pits, that will  
17 be serving a rear part of the roof and this area which I  
18 think is the center, the south part of the center. Then we  
19 have some underground storm water management near the  
20 entrance there, two large underground pipes for storage.

21 MS. MEAD: And did you feel these changes  
22 warranted a reconfirmation of the concept?

23 MS. CURRANO: No. I did not. It's not standard  
24 industry practice for us to currently reconfirm with the  
25 department of permitting services for every small revision.

1 MS. MEAD: Okay. Are the methods for the  
2 treatment similar to the previous design?

3 MS. CURRANO: They are the same, actually. We  
4 kind of have all the same methods of treatment. We are just  
5 having new locations for those methods.

6 MS. MEAD: Will the concept still provide any  
7 oversize storm water management structures and features?

8 MS. CURRANO: Yes. It will. Actually, we are  
9 treating all the sidewalk and the exterior to the site. We  
10 are making treatment for that by over sizing our own storm  
11 water management on sight.

12 MS. MEAD: How would the drainage on Gilmore be  
13 addressed? To Gilmore Drive?

14 MS. CURRANO: I'll just gesture again for them.

15 MS. MEAD: All right.

16 MS. CURRANO: The drainage for this site comes  
17 towards the south, towards this existing inlet there on  
18 Gilmore Drive which is adjacent to the property, and it  
19 continues to do that right now. There is no surrounding  
20 agent on the site right now. Once our property is built, I  
21 will be providing storm water management. So, that will be  
22 the change that would be felt by this inlet on Gilmore  
23 Drive.

24 MS. MEAD: Will there be any difference to the  
25 impact on that inlet on Gilmore Drive?



1 MS. CURRANO: There is. A small storm that would  
2 see less. We would be treating all that lot within our own  
3 site. It would have less runoff during a larger storm.

4 MS. MEAD: Thank you.

5 MS. CURRANO: Thank you.

6 MS. MEAD: Per Park and Planning=s question, is  
7 the dry well at the end of the islets there on the east side  
8 of the site an issue for curbing service or will it create  
9 too much storm water flowing into the dry well?

10 MS. CURRANO: It is buried, and it=s a buried  
11 feature. It=s not on surface. All the water that=s coming  
12 through that swell would be on surface. So, we don=t feel  
13 it=s an issue ourselves. However, with a reduction in  
14 impervious area, I=ve been given many more opportunities to  
15 place storm management facilities should the -- in the end  
16 of, you know, when we go through final construction design  
17 and final construction documents, if that location is not  
18 preferred, we have many other locations that we can place  
19 this particular dry well.

20 MS. MEAD: And similar along the lines of the  
21 location, do the dry wells satisfy the permitting services  
22 minimum requirements for setbacks currently?

23 MS. CURRANO: That=s correct. Right now, it=s  
24 required a minimum of 20 feet from foundations, existing and  
25 proposed, and right now I was shown it is 20 feet from the

1 existing and proposed foundations.

2 MS. MEAD: And you would be able to move it  
3 further away from those foundations if requested?

4 MS. CURRANO: Yes. If requested and required, we  
5 can move that one.

6 MS. MEAD: Okay. In your opinion as an engineer  
7 familiar with the present development as revised, will the  
8 proposed special exception be adequately served by public  
9 facilities and services for storm water management?

10 MS. CURRANO: Regarding storm water, definitely.  
11 We are adequately served. We meet all the requirements from  
12 the state and the county. No problems.

13 MS. MEAD: In your opinion, will the facility be  
14 able to satisfy a special exception condition of an approval  
15 to comply with any ultimate approvals for more management  
16 permit plan and set them in an erosion control permits?

17 MS. CURRANO: Yes. 100 percent.

18 MS. MEAD: In your opinion, then, based on the  
19 civil engineering, will the proposed daycare facility be yet  
20 detrimental to the surrounding properties?

21 MS. CURRANO: For storm management, no. We are  
22 improving the existing conditions by providing storm  
23 management where none is currently existing.

24 MS. MEAD: Those are all the questions I have for  
25 Ms. Currano.

1           EXAMINER: All right. Ms. Currano, does this  
2 still, I may have missed your answer. Does this still  
3 provide the oversized storm water management structures?

4           MS. CURRANO: Yes. That=s correct.

5           EXAMINER: Okay. And can you address the tree  
6 save plan or is that Mr. Sekerek?

7           MS. CURRANO: I=m sorry. That must be Mr.  
8 Sekerek. Yeah.

9           EXAMINER: Okay. Mr. Leibowitz, do you have any  
10 questions?

11          MR. LEIBOWITZ: I have a few. Ms. Currano, have  
12 you been to the site yourself?

13          MS. CURRANO: Yes. Many times.

14          MR. LEIBOWITZ: Okay. I=m just going to get up  
15 and refer to the exhibit.

16          EXAMINER: That=s fine. Exhibit 153.

17          MR. LEIBOWITZ: We=re referring to Exhibit 153,  
18 and you had referred to an existing overflow inlet. Is that  
19 correct?

20          MS. CURRANO: An existing inlet that doesn=t treat  
21 just overflow. It treats all storm water, the runoff. But,  
22 yes. It=s an existing inlet.

23          MR. LEIBOWITZ: Okay. An existing inlet. And you  
24 pointed near the property line with the proposed site and  
25 we=ll refer to as Lot 9.

1 MS. CURRANO: Please.

2 MR. LEIBOWITZ: Is that correct?

3 MS. CURRANO: Yes. You can see it. It=s shown  
4 there. It=s a small L. See if I can gesture for you.

5 MR. LEIBOWITZ: It=s on the opposite side of the  
6 street from the -- is it this?

7 MS. CURRANO: Uh-huh. That=s correct. Right  
8 there.

9 MR. LEIBOWITZ: So, on the opposite side of the  
10 street from the proposed development?

11 MS. CURRANO: Further down stream from the  
12 proposed development.

13 EXAMINER: Wait. As I read that, it=s on the same  
14 side of the street.

15 MR. LEIBOWITZ: It=s on the same side of the  
16 street.

17 MS. CURRANO: Yeah. Yeah. I apologize. Same  
18 side.

19 EXAMINER: Sits just to the east of the property  
20 line.

21 MS. CURRANO: Correct. Correct.

22 EXAMINER: All right.

23 MR. LEIBOWITZ: And by inlet, you mean it=s what a  
24 lay person might think is a sewer?

25 MS. CURRANO: Storm sewer. Yeah.

1 MR. LEIBOWITZ: Storm sewer.

2 MS. CURRANO: Yeah. It has a throat that the  
3 water from entering the gutter would run into the inlet and  
4 then there are storm water pipes underground that carry it  
5 towards fall structures.

6 MR. LEIBOWITZ: Okay. I=m going to show you what  
7 I can -- are we up to 168?

8 EXAMINER: Yes. No. I have 170.

9 MS. MEAD: 170.

10 MR. LEIBOWITZ: Oh. I=m sorry. I=ll call it  
11 Exhibit 170. I have black and white copies and the  
12 originals in color.

13 EXAMINER: Okay. And this is --

14 MR. LEIBOWITZ: And this is a photograph of the  
15 site and Lot 9. I=ll show the witness the color copy.

16 MS. CURRANO: Okay. Thank you.

17 MR. LEIBOWITZ: Ms. Mead and I get the, okay. Do  
18 you agree that this is a photograph of -- the left side of  
19 the photograph is the site that we=re talking about and to  
20 the right side of the photograph is Lot 9.

21 MS. CURRANO: Based on this, it appears that this  
22 is the correct street. But unfortunately, I don=t have a  
23 street name but I definitely see a -- are you going to  
24 use --

25 MR. LEIBOWITZ: Okay. Well, let me show you --

1 MS. CURRANO: All right.

2 MR. LEIBOWITZ: If we look at Exhibit 61H. Would  
3 you agree that this picture on 61H is --

4 MS. CURRANO: It=s the lot in question.

5 MR. LEIBOWITZ: It=s the lot in question and that  
6 170 is that what? Exhibit 170 is showing a portion of what  
7 is shown on 61H.

8 MS. CURRANO: It appears that way.

9 MR. LEIBOWITZ: Okay. So, we agree that this is  
10 the lot we=re talking about?

11 EXAMINER: Lot 9.

12 MS. CURRANO: I think so.

13 MR. LEIBOWITZ: Okay. Would you agree that  
14 there=s no inlet --

15 MS. CURRANO: I do agree with that.

16 MR. LEIBOWITZ: -- in that photograph?

17 MS. CURRANO: I do agree with that.

18 MR. LEIBOWITZ: Okay. Where is the existing inlet  
19 then?

20 EXAMINER: Okay. From what source did you base  
21 the fact that there was an inlet, there is an inlet?

22 MS. CURRANO: The field survey, actually. It was  
23 done when we started the project quite a bit ago. But,  
24 yeah. We have a field survey. If you look at the colored  
25 photo, it looks like the curb is new.

1           EXAMINER: And I guess, if I may, the follow-up  
2 question is if the inlet isn=t there, how does that change  
3 your analysis?

4           MS. CURRANO: The water would continue to run in  
5 the gutter to further downstream which would be toward the  
6 east along Gilmore Drive, and there is a secondary inlet  
7 further down Gilmore Drive.

8           EXAMINER: In your opinion, would that meet DPS  
9 standard?

10          MS. CURRANO: Yes. It would.

11          MR. LEIBOWITZ: The parking lot has been re-  
12 oriented from the previous proposal.

13          MS. CURRANO: That=s correct.

14          MR. LEIBOWITZ: Okay. The previous proposal had  
15 an exit on both Burnett and Gilmore, and now it=s only  
16 Gilmore. Right?

17          MS. CURRANO: I=ll clarify. By previous proposal,  
18 you mean, I think, two proposals ago which would be in 2011?  
19 2010? There=s several iterations on this particular plan.

20          MR. LEIBOWITZ: There have been.

21          EXAMINER: Well, both the prior applications have  
22 had an ingress/egress on Gilmore plus a right out only on  
23 Burnett. So, they had two access points.

24          MS. CURRANO: Okay. I agree.

25          MR. LEIBOWITZ: Okay. There have been several

1 iterations.

2 MS. CURRANO: Can=t keep up.

3 MR. LEIBOWITZ: Me, too. With only one egress  
4 from the parking lot now onto Gilmoure, will that increase  
5 the amount of water runoff onto Gilmoure than would have  
6 previously been the case?

7 MS. CURRANO: Actually, we have a reduction in  
8 impervious areas. So, we=ll have less, actually.  
9 Regardless of where they enter and exit, it doesn=t change.

10 MR. LEIBOWITZ: Will water from the parking lot  
11 run out of the parking lot onto Gilmoure Drive?

12 MS. CURRANO: Yes. It will. Yes. It will. It  
13 goes through the swale first, obviously. Should I clarify  
14 that? Sorry? Should I clarify that?

15 EXAMINER: Yeah. Why don=t you. Is the swale  
16 marked on the --

17 MS. CURRANO: It is. It=s actually to the west of  
18 the parking, called file swale one, water that falls onto  
19 this parking area. It=s file swale one. It slows down  
20 towards the south, parallel to Burnett Avenue. It goes to  
21 an inlet very similar to the one that we were looking at  
22 previously, underground to the storm drain system, and so  
23 it=s underground. It does not hit Burnett Avenue, I mean  
24 Gilmoure Avenue from the main part of the parking lot. A  
25 small section, you can see this large dark line which goes



1 right through the entrance, a small section about to get  
2 more direct. It's the same as the previous entrance, and  
3 this part cannot be captured by this swale by slowing  
4 gravity runs. It has to flow towards Gilmore Drive. This  
5 portion continues to go.

6 MR. LEIBOWITZ: So, little of the storm water that  
7 would fall onto the parking surface would actually flow out  
8 through the exit of the parking lot.

9 MS. CURRANO: If I recall, the entrance would  
10 continue to flow out that entrance swale.

11 MR. LEIBOWITZ: But the design is that the rest of  
12 it would flow west --

13 MS. CURRANO: Correct.

14 MR. LEIBOWITZ: -- into the swale.

15 MS. CURRANO: You are correct.

16 MR. LEIBOWITZ: So, the change in the entrances to  
17 the parking lot don't impact with the storm water  
18 management?

19 MS. CURRANO: You are correct.

20 MR. LEIBOWITZ: Okay. I have no more questions.

21 EXAMINER: All right. Ms. Mead.

22 MS. MEAD: I think the hearing examiner may have  
23 covered mine but just to clarify. If there is no inlet  
24 immediately to the east of the site on Gilmore Drive, how  
25 would storm water be accommodated?

1 MS. CURRANO: Any runoff that=s not captured on  
2 site then it goes straight to a storm drain system existing  
3 on the road, would go into the gutter pan, the north gutter  
4 pan, of Gilmore Drive, and continue to run along Gilmore  
5 Drive to an existing inlet that is further down.

6 MS. MEAD: With the development of the site and  
7 your storm water management facilities as proposed, will  
8 that be more or less than is flowing to that inlet today?

9 MS. CURRANO: It=ll be less. During the one year  
10 of standard storms, it=ll be less.

11 MS. MEAD: Thank you. And I just want to refer to  
12 -- whoops. Sorry, Mr. Sekerek. Watch your toe there. We  
13 looked at Exhibit 61H to confirm the photo. Would you agree  
14 that Exhibit 61H shows a driveway currently on the property?

15 MS. CURRANO: Correct.

16 MS. MEAD: Is any storm water runoff from that  
17 driveway currently treated today?

18 MS. CURRANO: There is no treatment today.

19 EXAMINER: Ms. Mead, while you=re up, I=d like to  
20 have the color photo --

21 MS. MEAD: Oh. Yes.

22 EXAMINER: -- in our files. So, can I switch --

23 MS. MEAD: Yes.

24 EXAMINER: -- the black and white with this?

25 Thank you.

1 MS. MEAD: No further questions for Ms. Currano.

2 EXAMINER: All right. Your next witness, please.

3 MS. MEAD: Our next witness would be Mr. Starkey.

4 This may be awhile.

5 EXAMINER: Good morning, Mr. Starkey.

6 MR. STARKEY: Good morning. How are you?

7 EXAMINER: Almost after. One minute to the  
8 afternoon. You=re still under oath, Mr. Starkey. So you  
9 know you=re aware. Everybody=s shifting their papers and  
10 sitting up straight.

11 MR. STARKEY: Thank you so much.

12 EXAMINER: You=re the center of attention.

13 MS. MEAD: Mr. Starkey, in their testimony, the  
14 opposition expressed concern that the site does not have  
15 access directly on University Boulevard. In your opinion,  
16 is direct access necessary from University Boulevard?

17 MR. STARKEY: No. The location of the site and  
18 it=s proximity to University Boulevard allows parents to  
19 gain access directly back to University Boulevard being one  
20 block from University Boulevard. Considering that people  
21 that enter the site on Gilmore simply can turn right out of  
22 the site, right back onto Burnett and get directly back onto  
23 University Boulevard without having to traverse into the  
24 community.

25 MS. MEAD: If access were provided on University

1 Boulevard, would it be a full movement access?

2 MR. STARKEY: No. They could only do it -- it  
3 would be right in and right out only.

4 MS. MEAD: So, if there was only one access point  
5 on University Boulevard, they would only be able to turn --

6 MR. STARKEY: Right.

7 MS. MEAD: -- right.

8 MR. STARKEY: Right on here. Turn right.

9 MS. MEAD: Okay. Did Park and Planning staff  
10 address this concern about access to University Boulevard?

11 MR. STARKEY: Yes. In their original memo we did  
12 in 47, I believe, they found that this site access would be  
13 safe and efficient and they noted that the low volumes would  
14 not be a concern here, and they were looking at the higher  
15 numbers of 120 students a day, 25 staff at that time.

16 MS. MEAD: What about the elimination of the  
17 egress onto Burnett Avenue with the revised plan? Does that  
18 change your opinion?

19 MR. STARKEY: No. Again, all I did was allow you  
20 to turn right out, and if you look at Exhibit 99C, we=re  
21 only talking about another 50 to 100 feet. So, again, it=s  
22 still convenient to get back out onto University Boulevard  
23 from Gilmoure Drive.

24 MS. MEAD: And did Park and Planning staff address  
25 the elimination of the egress onto Burnett Avenue?

1           MR. STARKEY: Yes. When they reviewed the revised  
2 plan in November 2011, recommendation Exhibit 120, they  
3 found that the revised plan with only one access on Gilmore  
4 Drive would, again, remain safe and adequate.

5           MS. MEAD: Thank you. The opposition expressed  
6 concern that parents will create cut-through traffic in the  
7 neighborhood using Burnett Avenue and Gilmore Avenue or  
8 Drive and bring nonresidential traffic in the neighborhood.  
9 Do you agree?

10          MR. STARKEY: No. Once again, the proximity of  
11 the site and its location are right at the corner of  
12 University and Burnett does not create a need to go through  
13 the neighborhood.

14          EXAMINER: Just one second. Can people not have  
15 conversations or I don't know what's going on there but it's  
16 distracting my attention from Mr. Starkey, and I'll give you  
17 the same attention when you guys, when you all testify.  
18 Thanks. Go ahead, Mr. Starkey. I'm sorry.

19          MR. STARKEY: Given that it's located right in the  
20 corner of Burnett and University, there's no need to go  
21 through the neighborhood to access this site. I mean,  
22 people's intentions is to access University Boulevard. So,  
23 the access on Gilmore Drive allows them to come right back  
24 onto Burnett Avenue and get right back to University  
25 Boulevard, and again, this type of use is only generating

1 about one-third of its trips as new trips. The majority of  
2 people are on University Boulevard going to and from another  
3 destination. So, their intention is to get back to  
4 University Boulevard.

5 MS. MEAD: Did Park and Planning staff address  
6 this cut-through traffic issue?

7 MR. STARKEY: Yes. In their memos and in their  
8 responses, they, again, mention the same issues I just did  
9 about the nature of trips to daycare center. The majority  
10 of them are pass-by or other trips. Only about one-third  
11 are new trips, and they indicated that they believe there  
12 would be no cut through trips coming to this use. If there  
13 were trips generated in the neighborhood, it would be from  
14 the neighborhood. If that were the case, they=re not cut  
15 through. They=re originating and going back to the  
16 neighborhood where they came from.

17 MS. MEAD: Okay. The opposition also expressed  
18 concern about additional wait times at Burnett to University  
19 Boulevard because of this special exception use. Can you  
20 please explain the impact of this proposed special exception  
21 at this intersection?

22 MR. STARKEY: Going back to Exhibit 96G which was  
23 to revise my memorandum which talked about the trip  
24 generation for the revised numbers for the 75 children and  
25 15 staff. We=d have a maximum of 24 outbound trips in the

1 evening peak hour. That=s generating less than one trip  
2 every two minutes. That would not be a great impact on the  
3 intersection at University Boulevard and Burnett Avenue. So  
4 that, I wouldn=t anticipate that there would be any greater  
5 wait times at that intersection generated by this use.

6 EXAMINER: Okay. Hold on. I=m sorry. Stop there  
7 a second.

8 MR. STARKEY: Okay.

9 EXAMINER: I want to understand exactly what  
10 you=re saying because it does seem to me that there=s -- I  
11 think what Mister, I think it was Mr. Richardson, but  
12 whoever testified, he=s saying that right now each car going  
13 out takes a minute and a half, correct, to cross and make a  
14 left turn, and your traffic counts indicated, I don=t have  
15 one with me. It seems counter intuitive to me if there=s 24  
16 more trips --

17 MR. STARKEY: In an hour.

18 EXAMINER: An hour. Right. That=s what I=m  
19 saying. That with one and a half minute wait time at the  
20 intersection that that=s going to say there=s no change in  
21 the existing conditions because the one and a half minute  
22 wait time is only when you get up to the intersection. In  
23 other words, it takes you one and a half minutes to cross.  
24 So, the question is are you going to get queuing, I guess,  
25 is what my question is.

1           MR. STARKEY: So, what I=m saying to you is so  
2 when that person left, my new person entered.

3           EXAMINER: Right.

4           MR. STARKEY: So, what I=m saying to you is so you  
5 just left and I was just coming. So, there=s no appreciable  
6 increase in the delay there. That=s what I=m saying.

7           EXAMINER: But, I=m talking about the queuing. Is  
8 there going to be a stack, a bigger stack, of cars coming  
9 down from that avenue because you have more trips on the  
10 road?

11           MR. STARKEY: But if there=s only, okay. So, he=s  
12 saying that there=s one person -- it takes a person 90  
13 seconds to get through.

14           EXAMINER: Yeah.

15           MR. STARKEY: And I=m saying I=m only adding one  
16 person every 90 seconds.

17           EXAMINER: You said one every, oh. Okay. You  
18 said one every two minutes but --

19           MR. STARKEY: Less than one every two minutes.

20           EXAMINER: Okay.

21           MR. STARKEY: So, I=m saying that when you leave,  
22 I come.

23           EXAMINER: Right.

24           MR. STARKEY: So, there=s no appreciable  
25 difference in the delay is what I=m saying.



1 EXAMINER: Okay.

2 MR. STARKEY: Okay?

3 EXAMINER: I got you.

4 MR. STARKEY: Okay.

5 EXAMINER: I just wanted to make sure I understood  
6 that.

7 MR. STARKEY: Okay.

8 EXAMINER: And you=re basing your testimony that  
9 people are going to take a right out and a right up Burnett  
10 onto University --

11 MR. STARKEY: Correct.

12 EXAMINER: -- because that=s the quickest way.

13 MR. STARKEY: Because that=s where they -- because  
14 based upon the distribution, that=s where they want to go.

15 EXAMINER: Okay. But, what I=d like you to  
16 address if you could is Mr. Richardson=s testimony that  
17 people, to avoid that intersection, why aren=t they going to  
18 go through the neighborhood?

19 MR. STARKEY: Because unless they are familiar  
20 with that neighborhood, they don=t know any other choices,  
21 and that=s not where they want to go. Okay?

22 EXAMINER: Okay. Let me ask you one more  
23 question. What if there was, at the egress, what if there  
24 was a right turn, what if the applicant placed a right turn  
25 only sign as you=re going egress. Is that going to

1 significantly -- because then, the people in the community,  
2 if they want to go down back into the community, they could  
3 take a left onto Burnett and would there be a problem with  
4 doing that? The idea is to steer them away from cutting  
5 through Gilmore Road.

6 MR. STARKEY: Are you indicating that you want to  
7 require the applicant to put in a right turn only sign at  
8 the --

9 EXAMINER: I'm open at this point. I'm just  
10 asking you whether that would be an effective means of  
11 reducing any potential cut-through traffic on Gilmore.  
12 What I'm hearing from the neighborhood is that they're  
13 concerned that people are going to cut through, and you're  
14 saying probably not. Okay? They're probably not going to  
15 cut through but I think the testimony also is there are  
16 speed controls on Burnett but not on Gilmore to mitigate  
17 the cut-through traffic traffic. So, my question is would  
18 it be a difficult thing or would it be effective -- would it  
19 decrease the possibility of people using --

20 MR. STARKEY: Gilmore?

21 EXAMINER: -- Gilmore if you put a right-turn-  
22 only directional sign at the egress onto Gilmore?

23 MR. STARKEY: Yes.

24 EXAMINER: Okay. Okay. And I'm sorry to  
25 interrupt.

1 MR. STARKEY: That=s okay.

2 EXAMINER: This is my concerns. So, go ahead, Ms.  
3 Mead.

4 MS. MEAD: Mr. Starkey, in your projections and  
5 your exhibits in the traffic study, did you have any trips  
6 going east on Gilmore Drive?

7 MR. STARKEY: No. We have trips going south on  
8 Burnett.

9 MS. MEAD: So, the proposal to put a right turn  
10 only sign at the egress for this would not negatively impact  
11 the traffic flow as you had projected?

12 MR. STARKEY: No. Not at all.

13 MS. MEAD: Thank you. In your opinion, are the  
14 traffic projections conservative for this site?

15 MR. STARKEY: Yes. In the case of, as Ms. Memon  
16 indicated earlier, she anticipates that a majority of her  
17 staff would be using transit. So, in this event, I would  
18 say that our trip generation is conservative and that we  
19 didn=t assume at a higher rate of transit, well, the rates  
20 we use here are indicative of any site anywhere in the  
21 county so that a higher use of transit would say that these  
22 trips would be higher than anticipated for this site.

23 MS. MEAD: Thank you. And have you updated any of  
24 the exhibits from the original traffic study to reflect the  
25 revised enrollment numbers in this claim?

1           MR. STARKEY: Yes. Exhibit 4, site generated  
2 trips, primary and diverted, was updated to reflect the  
3 revised, the reduction in staff numbers.

4           MS. MEAD: We'd like to submit this into the  
5 record. It's to correspond to Exhibit 96G.

6           EXAMINER: That was already in your amended -- 96G  
7 was your revision. Right?

8           MS. MEAD: Correct.

9           MR. STARKEY: Right.

10          EXAMINER: Thank you. So, this will be 171 which  
11 is revised Exhibit 4 to traffic study.

12          MS. MEAD: Correct. Thank you. And could you  
13 just briefly explain the changes in the exhibit?

14          MR. STARKEY: This reflects the revision of trips  
15 for the reduction in staffing, less children and staffing  
16 levels for the site in that the total number of trips were  
17 reduced. So, this just reflects that reduction on the road  
18 network for the site.

19          EXAMINER: And are these the, oh. I see the peak  
20 totals there. Okay.

21          MR. STARKEY: Yes. And this does -- the pass by  
22 trips remain the same. So that was Exhibit 4A. So that  
23 remained the same.

24          EXAMINER: Right.

25          MS. MEAD: And the new use exhibit.

1 MR. STARKEY: Okay.

2 MS. MEAD: The recent testimony indicated and  
3 submitted into the record recently indicated concerns about  
4 crossing University Boulevard to take either your morning  
5 bus arrival or your evening bus ride home for those who  
6 choose to take the bus. Could you explain ways to traverse  
7 University Boulevard?

8 MR. STARKEY: Okay. Looking at Exhibit 4, 4? 4A?  
9 I=m not certain.

10 EXAMINER: I had trouble. I=m --

11 MR. STARKEY: 4F. It=s 4F.

12 EXAMINER: 4F. Okay.

13 MR. STARKEY: 4F. The site being in the center  
14 here identified as site. To the west, there is a crossing  
15 which has a flasher. Immediately at the intersection of  
16 University Boulevard and Burnett Avenue, there is a marked  
17 crosswalk which is unsignalized. There is a signalized  
18 crossing to the east at University Avenue, and this is one  
19 jug handle of the intersection, and there are signalized  
20 crossings at University Boulevard and US 29. One is west  
21 bound University Boulevard and one at east bound University  
22 Boulevard. So, there are multiple options to cross  
23 University Boulevard in the vicinity of the site.

24 MS. MEAD: And if you could clarify. Is the  
25 crosswalk near the site signalized or not signalized?

1           MR. STARKEY: The crosswalk immediately at the  
2 site is unsignalized. But, to the west, this has a flasher  
3 which is -- you can call that signalized but it=s just a  
4 flasher. When the pedestrian is there, they push the button  
5 and the flashers come on. To the east, there=s a signalized  
6 crosswalk and further east, there are two signalized  
7 crosswalks.

8           EXAMINER: Is it orange or red light?

9           MR. STARKEY: It=s yellow. Yellow. It=s a yellow  
10 flasher.

11          MS. MEAD: And again, do your projections in the  
12 traffic study assume that there=s going to be any bus trips  
13 as part of the traffic study projections?

14          MR. STARKEY: No.

15          MS. MEAD: The opposition has expressed concern  
16 that the traffic study didn=t include the intersection of  
17 Colesville, Route 29, and University Boulevard, 190,  
18 westbound, also referred to in the record as the north  
19 intersection related to Colesville and University Boulevard,  
20 and although transportation staff has addressed this in the  
21 recent exhibits, I don=t have those numbers previously  
22 handled, and they confirmed both in their December staff  
23 report that additional intersections were not required. Can  
24 you explain the impact of this use at that intersection just  
25 so we know, hypothetically, what our impact would be?

1           MR. STARKEY: Okay. Again, this intersection was  
2 not part of our original scope. The staff has responded to  
3 the hearing examiner and gave reasons for that.

4           EXAMINER: Have you seen both responses? There  
5 were two.

6           MR. STARKEY: Yes. I have.

7           EXAMINER: Oh. Okay.

8           MR. STARKEY: Yes. And again, as staff indicated,  
9 that intersection, actually, the only information that=s  
10 available right now indicated that that intersection is  
11 operating below the threshold. As shown in Exhibit 171, we  
12 would have increased the volume at that intersection by a  
13 maximum of 11 double trips, and that would have increased  
14 the CLV by a maximum of three critical lane volume,  
15 movements. Excuse me. Movements, and adding that to the  
16 CLV at that intersection, it would still be below the  
17 threshold. So, again, once again, that intersection would  
18 have passed the LATR threshold criteria.

19           MS. MEAD: And can you just clarify in Exhibit 171  
20 where you get the maximum 11 trips from in the --

21           MR. STARKEY: In the southbound direction, we have  
22 two right turning vehicles in the evening peak hour, and in  
23 the westbound direction, we have nine through movements in  
24 the westbound direction. Nine plus two is 11 trips, and  
25 there are, in those directions, there are four through lanes

1 in each direction and those were a mix. The critical lane  
2 factor is .29. So, 11 times .29, you=d get roughly three  
3 trip lane movements.

4 EXAMINER: Are all the movements at that  
5 intersection critical lanes?

6 MR. STARKEY: Yes. Because there is no free right  
7 turn.

8 EXAMINER: Okay.

9 MR. STARKEY: And the throughs are all in the four  
10 lanes.

11 EXAMINER: I saw something in Ms. Quinn=s e-mail.  
12 So, I was curious whether they=re all critical lanes.

13 MR. STARKEY: I have, actually, an exhibit which I  
14 can enter into the record --

15 EXAMINER: Okay.

16 MR. STARKEY: -- which is the information from  
17 Park and Planning=s intersection analysis database. It is  
18 the 2006, actually, the volumes for that intersection at US  
19 29 and Maryland 183 westbound. It shows the lane use.

20 EXAMINER: Okay. That=ll be Exhibit 172 and then  
21 see PPC intersection analysis.

22 MR. STARKEY: And then actually, this is part of  
23 the MAR report. So, it=s actually already in the record but  
24 just for clarification.

25 EXAMINER: Oh. Okay. Well, I=ll mark it



1 separately. So, if we refer to it at least we have it  
2 pinpointed. So, it'll be in MNCPPC intersection analysis  
3 for Colesville and University Boulevard west.

4 MR. STARKEY: So, you can see there in a  
5 southbound direction, the right turn movement is part of the  
6 right most lane. So, from a critical lane aspect it becomes  
7 part of the four lanes and the through movements are your  
8 four lanes. So, when you calculate the critical lane  
9 volume, you take off four lanes. That's the movements. So,  
10 that's a check like that.

11 EXAMINER: Thank you.

12 MS. MEAD: And referring to Exhibit 172, does this  
13 exhibit indicate that this intersection is above the  
14 threshold?

15 MR. STARKEY: No. If you look, there is a chart  
16 at the bottom of the page. It shows the intersection ID,  
17 331. It shows the critical lane volume for the morning and  
18 the critical lane volume for the evening. The morning it's  
19 1589. The evening it's 1434. The threshold for this  
20 intersection, for this policy area is 1600. So, it is below  
21 that. If you take 1589, the higher number, and you add  
22 three, you'd be at 1592. Again, below 1600. So, once  
23 again, you're passing the threshold for this intersection.

24 MS. MEAD: Thank you. In your opinion, do the  
25 materials submitted at the last hearing indicate, and in the

1 record previously from your traffic study and otherwise,  
2 indicate that the intersection of south Colesville and  
3 University Boulevard, the eastbound intersection are  
4 currently operating, in your opinion, below or above the  
5 threshold?

6 MR. STARKEY: The data, again, in the Park and  
7 Planning intersection analysis database indicates that this  
8 intersection was operating above the threshold. Information  
9 contained in my report for the intersection which was  
10 collected in, let me see. Check that. Excuse me. Let me  
11 check the date. In April 2010 indicated that the  
12 intersection was operating below the threshold. I also  
13 collected data in February 2009, again, for this case but we  
14 got delayed, and I had to redo my counts because they were  
15 beyond one year.

16 EXAMINER: Uh-huh.

17 MR. STARKEY: And the counts I conducted in  
18 February 2009 and again in April 2010 were both supported by  
19 the data collected at Maryland 193, University Boulevard,  
20 and Dennis Avenue, and they showed a consistency in the  
21 volume along University Boulevard, and I believe that the  
22 data that=s contained in the database was influenced by a  
23 traffic incident. I discussed this with Park and Planning  
24 staff, and they concur with me that they believe that there  
25 was, something occurred on the date of the count in the

1 database because there was consistency in both of my counts  
2 along the corridor and at this intersection for those two  
3 dates in question. So that I believe that some incident  
4 occurred for the dates or there=s something in the database.

5 MS. MEAD: Was there any variation between your  
6 2009 counts for that intersection and 2010 counts?

7 MR. STARKEY: There is roughly a 10 percent  
8 variation in the counts, and this is a fluctuation that=s  
9 typical for peak hour counts. This is an industry, an  
10 adopted standard in our industry.

11 MS. MEAD: And were the January 2009 counts from  
12 the mobility report, were they more than the 10 percent?

13 MR. STARKEY: Yes. They were well above. For  
14 example, the counts from February 2009 and April 2010, the  
15 volume approaching US 29 along University Boulevard was in  
16 the order of 1700 vehicles an hour. From the intersection  
17 database, the volumes were in the order of 2200. So, there  
18 was something occurred that day that boosted that. It=s not  
19 uncommon when you have a traffic incident that it forces  
20 traffic along a specific route. Randolph Road, University  
21 Boulevard, they are one of the two major east/west corridors  
22 in Montgomery County. Now, if something occurs that creates  
23 a traffic jam, those roads tend to get flooded by traffic on  
24 a particular day.

25 EXAMINER: So, in layman=s terms, you think it was

1 a blip, so to speak?

2 MR. STARKEY: Yes.

3 EXAMINER: Okay.

4 MS. MEAD: And you mentioned the traffic counts at  
5 University and Dennis Avenue. Were those volumes consistent  
6 with your counts for the eastbound intersection?

7 MR. STARKEY: Yes. I also consulted Park and  
8 Planning=s database for that intersection and those items  
9 were also consisted with the ones that I counted.

10 MS. MEAD: So, the volumes of the intersection of  
11 Maryland University and Dennis Avenue, those volumes  
12 indicate that there must have been a blip in the eastbound  
13 that January 2009. That study.

14 MR. STARKEY: Yes.

15 MS. MEAD: Did you receive any other confirmation  
16 of your 2010 traffic study which is in the record and was  
17 used for APF review other than the transportation staff  
18 reviews and recommendations of approval?

19 MR. STARKEY: Yes. As part of the review process,  
20 Park and Planning sends out studies to both the Maryland  
21 State Highway Administration and the Montgomery County  
22 Department of Transportation. Both of those agencies  
23 reviewed my report, and they wrote approval letters back to  
24 Park and Planning.

25 MS. MEAD: Do you have copies of those letters?

1           MR. STARKEY: Yes. I do. Unfortunately, I did  
2 not, and I'm sorry. I didn't make copies of those.

3           MS. MEAD: You have my copy.

4           MR. STARKEY: Okay.

5           EXAMINER: So, this will be 172 and 173.

6           MS. MEAD: I have 173.

7           EXAMINER: I mean 173 and 174.

8           MS. MEAD: There you go.

9           MR. LEIBOWITZ: Thank you.

10          MS. MEAD: A copy to Mr. Leibowitz and if we could  
11 get a --

12          MR. STARKEY: Yeah. I can reproduce those.

13          MS. MEAD: Okay. If you can rely on your memory  
14 to indicate with me.

15          EXAMINER: Okay. 173 will be a November 10, 2010  
16 letter to Cherian Eapen from Gregory Leck, and then 174 will  
17 be an 11-23-2010 letter from Steven Foster to Sharier  
18 Etemadi. Any objections, Mr. Leibowitz?

19          MR. LEIBOWITZ: No objection.

20          EXAMINER: All right. Continue, Mr. Starkey.

21          MS. MEAD: Mr. Starkey, if you could just  
22 summarize what those --

23          MR. STARKEY: These letters -- what the two  
24 agencies -- they will review a study for consistency and  
25 accuracy. They will pay particular attention to the counts

1 because that=s the basis of traffic studies. They will be  
2 reviewing for accuracy and consistency. So, based upon  
3 their reviews, they felt that the data in my study was  
4 consistent and accurate.

5 EXAMINER: Okay.

6 MS. MEAD: And did Park and Planning staff  
7 indicate that they had reviewed the count information as  
8 well?

9 MR. STARKEY: Yes.

10 MS. MEAD: Does adequate public facilities review,  
11 the APF review, that we=ve discussed and the opposition has  
12 raised, include a review beyond your local intersection  
13 review, beyond these intersection counts?

14 MR. STARKEY: Yes. There=s a two-prong approach  
15 to studying in the subdivision process. There=s a local  
16 area of transportation review, and there=s a policy, excuse  
17 me, mobility review, and in that, they look at transit  
18 access and congestion levels within a policy area, normally  
19 referred as PAMR. I mean, I=d like to point out that in  
20 this area, there=s a requirement to reduce your amount of  
21 new trips in its percentage, and it=s looked at every two  
22 years, and this area actually has gone down. It was 15  
23 percent, and it=s gone down to 10 percent. So, there=s been  
24 an acknowledgment that while it is congested, congestion  
25 levels are reducing themselves and transit availability is

1 becoming, excuse me. The use of transit is becoming more  
2 prevalent in this area. So, while we do acknowledge that  
3 the Four Corners area is congested, things are improving,  
4 and in addition to that, the county now has a county-wide  
5 bus rapid transit study under way and both US 29 and  
6 Maryland 183 corridors are high on the list for  
7 implementation of PRT in this area, and the applicant has  
8 made a commitment to meet its PAMR requirement and staff has  
9 pointed out that, you know, they've committed to that, and  
10 it's going to be part of this application.

11 MS. MEAD: What is that PAMR requirement for this  
12 area, currently?

13 MR. STARKEY: In this area, you have to mitigate  
14 10 percent of your trips, and the applicant has agreed to  
15 make a payment fee to meet that requirement.

16 MS. MEAD: Thank you.

17 EXAMINER: Okay.

18 MS. MEAD: And you referenced the bus rapid  
19 transit and these roads having a priority in that study.  
20 I'd like to, for our own people and the record, is this a  
21 copy of the current plans for the bus rapid transit at some  
22 point?

23 MR. STARKEY: Yes.

24 MS. QUINN: I have an objection to that.

25 EXAMINER: Okay. Come forward. Let me just mark

1 it first.

2 MS. QUINN: Okay.

3 EXAMINER: It doesn't mean it's admitted. It just  
4 means that we can refer to it by a specific -- what's the  
5 date of that?

6 MS. MEAD: It's a 12-8-11 staff report and  
7 attachment for the county wide transit corridors functional  
8 master plan.

9 EXAMINER: County-wide transit corridor functional  
10 master plan. All right. And you're objection?

11 MS. QUINN: Harriet Quinn for the record.

12 EXAMINER: Uh-huh.

13 MS. QUINN: My objection is that the bus rapid  
14 transit studies are just that. They are studies. There is  
15 nothing in place. There won't be for -- if they even  
16 actually adopt this, the earliest anything would be in place  
17 is five years from now, and so --

18 EXAMINER: So, you're saying it's irrelevant to  
19 the question we're looking at today?

20 MS. QUINN: Yes.

21 EXAMINER: Which is whether it meets the LATR and  
22 PAMR guidelines.

23 MS. QUINN: Right. They have done a feasibility  
24 study to determine which routes might be good for bus rapid  
25 transit but there's been no approval or anything. So, it's



1 really at the preliminary stages at this point.

2 EXAMINER: Okay.

3 MS. QUINN: And it=s been talked about in the  
4 past. Twelve years ago, we had a similar study on  
5 Colesville Road, and it was determined that it would  
6 actually make congestion worse because they would be taking  
7 travel lanes away in order to put the buses in dedicated  
8 lanes and so, at this point, these studies are just studies.  
9 There is nothing that=s been approved or adopted. It has to  
10 go through many levels before anything happens, similar to  
11 the purple line which has been a long time.

12 EXAMINER: I understand. Ms. Mead, it does seem  
13 like we are kind of limited in our consideration to what  
14 exists today.

15 MS. MEAD: And I=ll proffer why we were --

16 EXAMINER: Okay.

17 MS. MEAD: This is just to supplement Mr.  
18 Starkey=s comments that these two routes are part of the  
19 study for the bus rapid transit, and it=s not as if they=re  
20 recognized for their ridership. We=ve highlighted the pages  
21 that have these routes on them. We=re not submitting it for  
22 anything else. Mr. Starkey didn=t say that we relied on  
23 this whatsoever for our traffic study or that it was -- Mr.  
24 Starkey did not mention that it was part of the policy area  
25 mobility review. It was simply to supplement his comments

1 that that=s something that hopefully the community will see  
2 as a light at the end of the tunnel for their concerns.

3 That=s the only --

4 MS. QUINN: Well, that=s --

5 MS. MEAD: -- reason for our submission. We --

6 EXAMINER: Okay. Well, all right. I=m not going  
7 to let it in because I do think -- I know I=ve let some  
8 things in for the weight it deserves but we do have his  
9 testimony and, you know, if it=s a discussion with the  
10 community, that is something, you know, I don=t see that  
11 occurring in this case, resolving in this case.

12 MS. MEAD: Yet, we just submitted it to supplement  
13 his testimony that it is part of the bus rapid transit plan.

14 EXAMINER: I totally understand, and I do believe  
15 his testimony. All right.

16 MS. QUINN: Could I just make one additional  
17 comment? The reason it=s part of --

18 EXAMINER: Well --

19 MS. QUINN: Okay. All right. We=re ready --

20 EXAMINER: You can object but you can=t --

21 MS. MEAD: You won on this letter. It=s not in.

22 EXAMINER: You can=t testify.

23 MS. QUINN: I just wanted to add to the comment.  
24 Okay. You=re right. I can just --

25 EXAMINER: So, you know, it=s out of the record

1 right now. But, it=s not your time to testify. Now, I  
2 will, if you would like to stay there because cross-  
3 examination is coming up with Mr. Leibowitz. You know, I am  
4 impressed with your knowledge of the traffic issues in the  
5 area. If you would like to -- I invite you to stay at the  
6 table with Mr. Leibowitz so that he can, you and he can work  
7 together on if you have any questions for --

8 MR. LEIBOWITZ: Gee. Thanks.

9 EXAMINER: I=m doubling up on you.

10 MR. LEIBOWITZ: She can aide my paltry knowledge.  
11 Okay.

12 EXAMINER: No. I do agree that your knowledge is  
13 good in this area. Okay. So, 175 is not admitted. Ms.  
14 Mead, do you want to continue?

15 MS. MEAD: Yes. Mr. Starkey, the opposition  
16 expressed concern with street parking with a special  
17 exception use. Do you agree that it=ll be an issue with the  
18 users of this site parking on the streets?

19 MR. STARKEY: No. The proposed parking will meet  
20 the required parking for the use. In addition, as I=ve  
21 discussed earlier, the average turnover of six to 10 minutes  
22 for a drop off and pick up will be adequate to meet the  
23 needs of the center. Ms. Memon mentioned that the daycare  
24 study excerpt by transportation staff, I believe 154D, would  
25 allow the parking provided to adequately accommodate the

1 parents of the center and the daycare centers, again, are  
2 not similar to schools. They don=t have a determined drop  
3 off or pick up time. It=s staggered to meet parents= needs.  
4 As you know, all offices don=t start at the same time. All  
5 businesses don=t open at the same time. So, it is a natural  
6 staggering of drop off and pick up, and also believe staff  
7 and its many memorandums to you, Ms. Roberson, provided a  
8 trip generation study where it talked about parking at  
9 daycare centers, and it noted a requirement of a parking of  
10 2.36 spaces per 1,000 square feet. For this center, that  
11 would equate to a demand of about 11 spaces. So, even if,  
12 again, if all 15 staff parked, we talked about having 13  
13 spaces, that exceeds the 11 as determined by that study.  
14 So, again, there are multiple sources out there to tell us  
15 we don=t -- we=re going to meet our demand. So, no. I  
16 don=t think there will be any overflow requirements here,  
17 and again, we have our TMP which will ensure that parents  
18 understand you can=t park on the streets. So, I don=t think  
19 there=s any reason why we won=t be able to meet our needs at  
20 this center.

21 MS. MEAD: Have you been involved with other  
22 special exception daycare uses or schools that have TMPs?

23 MR. STARKEY: Yes. In the current realm of  
24 daycare centers, every case I=ve been involved with has  
25 instituted TMP.

1 MS. MEAD: So, a TMP is typical for a special  
2 exception daycare?

3 MR. STARKEY: Yes.

4 MS. MEAD: To your knowledge, does the TMP for  
5 this special exception and its location address parking or  
6 have an impact?

7 MR. STARKEY: A transportation management plan  
8 specifically addresses parking and the use of transit for  
9 staff at this center.

10 EXAMINER: On your, it=s Exhibit 171, but it=s  
11 your revised Exhibit 4 to the traffic study.

12 MR. STARKEY: Uh-huh.

13 EXAMINER: It has peak hour trips at 17 in and a  
14 total of 31 peak hour trips. Is that just the new trips or  
15 is that the pass-by trips, too?

16 MR. STARKEY: That=s the primary and diverted.  
17 That=s not the pass-by. Okay? The pass-by --

18 EXAMINER: What=s the difference between pass-by  
19 and diverted?

20 MR. STARKEY: Diverted is somebody who, if I go to  
21 Exhibit 4F. Say somebody=s on US 29.

22 EXAMINER: Uh-huh.

23 MR. STARKEY: Okay? They divert themselves to  
24 come to the site --

25 EXAMINER: I see.

1           MR. STARKEY: -- before they go back. Pass-by is  
2 somebody who=s on University Boulevard and turns right and  
3 turns right back out.

4           EXAMINER: Okay. All right.

5           MR. STARKEY: Diverted means they got off their  
6 normal route and came to the site and got back to their  
7 normal route.

8           EXAMINER: Okay. I understand.

9           MR. STARKEY: Okay.

10          EXAMINER: Thank you.

11          MS. MEAD: The opposition also expressed concerns  
12 in testimony and submitted a pedestrian impact study. Did  
13 you review pedestrian impacts in your traffic study?

14          MR. STARKEY: Yes. As part of the local  
15 transportation review, you=re required to conduct pedestrian  
16 counts at the intersection during peak hours. So, again, we  
17 conducted pedestrian counts at all the locations. You have  
18 to identify pedestrians on all the legs, identify the  
19 highest numbers, and observe if there are any operational  
20 problems. Again, because of the Blair High School, there  
21 are a lot of pedestrians crossing University Boulevard at US  
22 29. You have to see if there are any operational issues and  
23 if you took notes and conducted the data at those locations.  
24          MS. MEAD: And did your study make any conclusions  
25 for this use on the impacts to pedestrians?

1           MR. STARKEY: At this location, there aren't any  
2 operational problems here, and again, we're going to be  
3 making pedestrian improvements along the sidewalks. We're  
4 going to be installing a new crosswalk across Burnett Avenue  
5 and University Boulevard, and so we're going to be making  
6 enhancements for pedestrians here.

7           MS. MEAD: This is all the questions I have for  
8 Mr. Starkey, and this is --

9           EXAMINER: I just have a few.

10          MR. STARKEY: Okay.

11          MS. MEAD: Okay.

12          EXAMINER: I just want to make sure I understand  
13 this. I'm looking, again, at your Exhibit 4.

14          MR. STARKEY: Okay.

15          EXAMINER: The revised Exhibit 4 which is 171.  
16 Now, if you include -- I'm back on the delay on Brunett  
17 Avenue --

18          MR. STARKEY: Uh-huh.

19          EXAMINER: -- to tell you where I'm coming from.  
20 If you took all the trips that are going to be coming in and  
21 out of this site --

22          MR. STARKEY: Uh-huh.

23          EXAMINER: -- forget, you know, the LATR  
24 standards. But, if you just took all the trips that were  
25 going to come in and out of this site, how many would be --

1 in the am peak hour, how many would be coming out of  
2 Brunett?

3 MR. STARKEY: As shown on here 13. Five plus six.

4 EXAMINER: So, that=s all the trips, pass-by,  
5 diverted, and --

6 MR. STARKEY: The pass-by are an additional eight.

7 EXAMINER: Okay. So, you would have how many  
8 coming out?

9 MR. STARKEY: Thirteen plus eight. Twenty-one.

10 EXAMINER: Okay. Then you have 90 seconds to get  
11 through the light. Right?

12 MS. MEAD: According to --

13 EXAMINER: Let=s assume 90 seconds to get through  
14 the light.

15 MR. STARKEY: Okay. So, 90 seconds.

16 EXAMINER: You use the, okay. All right. I=m  
17 just doing the calculation in my head. Is it your testimony  
18 that that still would not result in a queue on Brunett  
19 Avenue as they --

20 MR. STARKEY: I didn=t say a queue. I didn=t say  
21 it would result in a queue. I said it wouldn=t result in an  
22 appreciable additional delay.

23 EXAMINER: Okay. Okay. All right. That was my  
24 question.

25 MR. STARKEY: Okay.



1 EXAMINER: Do you have any other questions, Ms.  
2 Mead?

3 MS. MEAD: Just a follow-up to yours. You noted  
4 that the trips won't create an additional delay. Do you  
5 believe any queuing would be extensive with the trips  
6 earlier from this site turning left on University Boulevard  
7 during the peak hour?

8 MR. STARKEY: No.

9 MS. MEAD: Thank you.

10 MS. QUINN: Turning left on Burnett?

11 MS. MEAD: Turning left from Burnett onto  
12 University Boulevard. Correct.

13 EXAMINER: Okay. In your traffics do you --  
14 there's a detail in your traffic study, okay. All right.  
15 Strike that. All right. Mr. Leibowitz.

16 MR. LEIBOWITZ: Thank you. Mr. Starkey, in  
17 determining how many trips would be made, you made an  
18 assumption about the number of siblings who would be  
19 attending the school. Right?

20 MR. STARKEY: No.

21 MR. LEIBOWITZ: You didn't? It's not one car-per-  
22 student that you're using. Correct?

23 MR. STARKEY: The trip generation was based upon  
24 -- the trip generates, trip generation rates contained in  
25 the LATR guidelines. That's how the trips were determined.

1           MR. LEIBOWITZ: The LATR guidelines are making an  
2 assumption about the number of siblings.

3           MR. STARKEY: The LATR guidelines were based upon  
4 trip generation studies conducted throughout the county.  
5 They actually went to daycare sites.

6           MR. LEIBOWITZ: Okay. Let me ask it this way. We  
7 have no idea how many siblings will be at the school.  
8 Right?

9           MR. STARKEY: Not right now. No. We do not.

10          MR. LEIBOWITZ: Okay. So, based on data collected  
11 and studies done and what not, there was a calculation made  
12 about siblings. Right?

13          MR. STARKEY: No.

14          MR. LEIBOWITZ: Was there a calculation done based  
15 on the number of children per car that would be using the  
16 facility?

17          MR. STARKEY: No. All that information is  
18 inherent.

19          MR. LEIBOWITZ: It=s not inherent.

20          EXAMINER: Wait. Wait. Wait. Wait. I think  
21 there=s a miscommunication.

22          MR. STARKEY: I do, too.

23          EXAMINER: I think what Mr. Leibowitz is asking  
24 is, does the ITE manual or the LATR guidelines, based on  
25 studies, assume a percentage of siblings? Not that you

1     calculated --

2             MR. STARKEY:   It=s not an assumption.

3             EXAMINER:   It=s based on actual studies?

4             MR. STARKEY:   Yes.

5             EXAMINER:   Okay.   So, based on these studies, they  
6     create a rate that includes multiple siblings, a certain  
7     percentage of multiple siblings per car?

8             MR. STARKEY:   Let=s back up.   Okay?

9             EXAMINER:   Yeah.

10            MR. STARKEY:   I go to a site.

11            EXAMINER:   Uh-huh.

12            MR. STARKEY:   I count the vehicles entering and  
13     exiting the driveway.

14            EXAMINER:   Uh-huh.

15            MR. STARKEY:   Okay?   To find out the number of  
16     siblings in the cars, I have to do an interview.   Okay?  
17     Unless I do an interview and include that with my  
18     information -- I can find that out but I have to also  
19     conduct an interview to tell me that information.   Okay?

20            EXAMINER:   Uh-huh.   Uh-huh.

21            MR. STARKEY:   Otherwise, it=s inherent in the  
22     data.   Okay?   But, unless I --

23            EXAMINER:   What data?

24            MR. STARKEY:   It=s inherent in the volume counts  
25     that I did.

1 EXAMINER: I=m sorry? The --

2 MR. STARKEY: The volume counts that I did at the  
3 driveway.

4 EXAMINER: Yeah.

5 MR. STARKEY: They include that information. But,  
6 unless I also sit there and record --

7 EXAMINER: Understand.

8 MR. STARKEY: I must also record the number of  
9 people that are in the car, I don=t have that information.  
10 Okay? It=s inherent in the data that I collected. But, if  
11 I don=t provide it to you, I can=t tell you that number.

12 EXAMINER: Okay. But, you base your estimation --

13 MR. STARKEY: Of what?

14 EXAMINER: You don=t have a count for this  
15 particular use yet because it doesn=t exist. Right?

16 MR. STARKEY: Correct.

17 EXAMINER: Okay. So, you=re basing your projected  
18 trip generation based on a formula.

19 MR. STARKEY: Correct.

20 EXAMINER: It=s based on studies that inherently  
21 take into account the number of children per car?

22 MR. STARKEY: Correct.

23 EXAMINER: Okay. Okay.

24 MR. LEIBOWITZ: Okay. And what is that number  
25 that these studies use? That you use to determine the trip

1 generation for this site?

2 MR. STARKEY: I don=t have the backup data. I  
3 can=t answer that question.

4 MR. LEIBOWITZ: Okay. Ms. Memon testified that in  
5 her experience at the other three sites that she runs, 10 to  
6 12 percent of the children are siblings. Is it fair to say  
7 that that base using those numbers, there would be greater  
8 trips generated from this site then what you have counted?

9 MR. STARKEY: I can=t make that determination.

10 EXAMINER: Well, he=s asking you -- yeah. How  
11 would you know that?

12 MR. STARKEY: Right. I can=t make that  
13 determination.

14 MR. LEIBOWITZ: Because you don=t know how -- you  
15 don=t know what the data is to determine how many siblings  
16 there were at any other site that=s studied. You just know  
17 how many cars were coming and going.

18 MR. STARKEY: I didn=t conduct the studies that we  
19 use to determine the rates that Montgomery County uses.

20 MR. LEIBOWITZ: Okay.

21 MR. STARKEY: So, I can=t answer that question.

22 MR. LEIBOWITZ: In this, there will be 76 students  
23 at this school. Correct?

24 MR. STARKEY: Seventy-five.

25 MS. MEAD: Seventy-six.

1 MR. STARKEY: There=s 76? Okay.

2 MR. LEIBOWITZ: Okay.

3 MS. MEAD: A blip.

4 MR. STARKEY: A blip.

5 MR. LEIBOWITZ: There will be 76 students at this  
6 school. Correct?

7 MR. STARKEY: Correct.

8 MR. LEIBOWITZ: Okay. And 10 percent of 76 is  
9 7.6. Correct?

10 MR. STARKEY: You would have to round up. We  
11 don=t make .6 children.

12 MR. LEIBOWITZ: Well, that was my next question.  
13 I just want to make sure we=re -- my math is the same as  
14 yours. So that would be, it would be 7 -- 10 percent is  
15 7.6. Right.

16 MR. STARKEY: Again, I don=t know how to make .6  
17 children.

18 MR. LEIBOWITZ: I would round that up to eight.

19 MR. STARKEY: I would round up to eight children.

20 MR. LEIBOWITZ: I would round that up to eight.

21 MR. STARKEY: Okay.

22 MR. LEIBOWITZ: Right? And so 76 minus eight is  
23 68. Correct?

24 MR. STARKEY: Okay.

25 MR. LEIBOWITZ: Your data that you=ve used for

1 trip generation does not -- it=s not that there will be 68  
2 parent or student trips from this site. Is that correct?

3 MR. STARKEY: My trip generation was based off  
4 staffing levels because that=s what the county uses,  
5 staffing levels.

6 MR. LEIBOWITZ: Okay. But can you answer my  
7 question?

8 MR. STARKEY: Once again, my trip generation was  
9 based on staff levels.

10 EXAMINER: Okay. Wait. Rephrase your question  
11 and rephrase your question.

12 MR. LEIBOWITZ: If it is 10 to 12 siblings -- 10  
13 to 12 percent of the student body or siblings, there would  
14 be 68 individual families attending this school.

15 EXAMINER: If you assume --

16 MR. LEIBOWITZ: We assume that Ms. Memon is  
17 correct.

18 EXAMINER: Okay. So, assume for, okay. Are you  
19 going to LATR or are you going to queuing because he=s  
20 requiring --

21 MR. LEIBOWITZ: The queue.

22 EXAMINER: Okay. So, with queuing, we=re not  
23 really applying necessarily LATR guidelines. So, I think  
24 what Mr. Leibowitz is asking is say every, hypothetical, say  
25 every -- say 68 families drive to the school. Say 68

1 families drive to the school. Okay. What, in your opinion,  
2 what impact would that have on the queuing?

3 MR. STARKEY: All parents don=t arrive at the same  
4 time. Okay? All employees don=t arrive at work at the same  
5 time. Okay? So, he=s asking me a hypothetical question,  
6 that=s not going to happen. Okay. So, I don=t, I mean, I  
7 understand what he=s trying to do.

8 EXAMINER: Assume.

9 MR. STARKEY: I can=t make that assumption.

10 EXAMINER: Well, I=m asking you to. Just assume.  
11 I=m not saying I=m going to give it weight. I=m just saying  
12 if you had 68 cars coming in and out at the peak hour --

13 MR. STARKEY: Sixty-eight cars --

14 EXAMINER: It seems to me you=d have a queue.

15 MR. STARKEY: You=d have a queue.

16 EXAMINER: Yeah. All right.

17 MR. LEIBOWITZ: Now, nobody likes traffic. Right?  
18 Nobody likes to sit in traffic. Right?

19 MR. STARKEY: I don=t.

20 EXAMINER: Right. As you experienced this  
21 morning. And you had testified earlier that when there is  
22 a, we=ll call it a traffic blip in one place then people  
23 tend to find a different route to get to their destination.  
24 Right? You were talking about the volume of cars in the  
25 database and that you thought that that was because there



1 was a traffic blip --

2 MR. STARKEY: Right.

3 MR. LEIBOWITZ: -- in laymen=s terms. Right?

4 MR. STARKEY: A traffic incident. Yes.

5 EXAMINER: Traffic incident. And so, drivers  
6 found alternate routes to avoid the incident. Right?

7 MR. STARKEY: Okay.

8 MS. MEAD: Well, are you agreeing with the  
9 statement or -- I don=t know that Mr. Leibowitz is asking a  
10 question or making a statement.

11 MR. STARKEY: I=m not --

12 EXAMINER: Is that a question?

13 MR. STARKEY: Right. I dropped --

14 EXAMINER: He did say right at the end. So, can  
15 you confirm whether you agree with that statement or not?

16 MR. STARKEY: When there=s a traffic incident,  
17 people tend to find alternate routes.

18 MR. LEIBOWITZ: Okay. And people also tend to  
19 find alternate routes to avoid heavy traffic. Right?

20 MR. STARKEY: If that=s possible. What I was  
21 referring to earlier, there are one or two, just two or  
22 three east/west routes in Montgomery County. So, if you  
23 have to travel in an east/west route, you=re pretty much  
24 stuck, and so there aren=t any -- there are only two  
25 alternates. So --

1 MR. LEIBOWITZ: Okay. But --

2 EXAMINER: Can I chime in here? No. I travel an  
3 east/west route. Go on.

4 MR. LEIBOWITZ: Me, too. In fact, that=s what  
5 cut-through traffic is, is traffic that people use to cut  
6 through someplace to avoid traffic. Right?

7 MR. STARKEY: Cut-through traffic has different  
8 definitions. I wouldn=t give a blanket statement on that.

9 MR. LEIBOWITZ: Is that a definition of cut-  
10 through traffic?

11 MR. STARKEY: Trying to avoid congestion is cut-  
12 through traffic. Yes. That is a definition.

13 MR. LEIBOWITZ: Okay. Now, there are a number of  
14 ways to get to University Boulevard from this neighborhood.  
15 Right? Not just Burnett.

16 MR. STARKEY: This neighborhood? Define this  
17 neighborhood.

18 MR. LEIBOWITZ: All right. Let me ask the  
19 question this way. I can get to University, from the site,  
20 I can get to University Boulevard by turning right on  
21 Burnett --

22 MR. STARKEY: Correct.

23 MR. LEIBOWITZ: -- as you=ve talked about.

24 MR. STARKEY: Yes. Yes.

25 MR. LEIBOWITZ: I can also go a block east and go

1 north on Lorraine. Is that correct?

2 MR. STARKEY: That=s more than a block.

3 EXAMINER: Well, can you do it, though? That=s  
4 the question.

5 MR. STARKEY: Yes.

6 MR. LEIBOWITZ: I can also go west to Dennis  
7 Avenue.

8 MR. STARKEY: Yes.

9 MR. LEIBOWITZ: And if my later destination is  
10 Colesville Road and perhaps the beltway, I can go through  
11 the neighborhood on Lanark and get to Colesville Road.  
12 Correct?

13 MR. STARKEY: Where is Lanark?

14 MR. LEIBOWITZ: Lanark is, well. This is Lanark.

15 MR. STARKEY: Okay.

16 MR. LEIBOWITZ: And I=m referring to Exhibit 4F.

17 EXAMINER: And you=re referring to --

18 MR. LEIBOWITZ: And I=m referring to Lanark Way  
19 which runs --

20 EXAMINER: Is that marked on that exhibit? Is the  
21 name marked?

22 MR. LEIBOWITZ: The name is marked and runs  
23 roughly east/west, roughly parallel to University Boulevard.

24 EXAMINER: Okay.

25 MR. STARKEY: Okay. Yes.

1           MR. LEIBOWITZ: And are you aware that there are  
2 traffic bumps on Burnett Avenue?

3           MR. STARKEY: Yes.

4           MR. LEIBOWITZ: Were you aware that there are  
5 traffic humps also on Lorraine which is --

6           MR. STARKEY: No. I=m not.

7           MR. LEIBOWITZ: Okay. Are you aware that there  
8 are traffic bumps or humps on Lanark?

9           MR. STARKEY: No. I am not.

10          MR. LEIBOWITZ: Okay. Would you agree that the  
11 county installs those at -- because they=re concerned about  
12 cut-through traffic.

13          MR. STARKEY: They are installed through a  
14 process. They have to be requested by the citizenry, and  
15 there is a process you have to go through. They=re not done  
16 ad hoc, and they=re not done by the county themselves. They  
17 have to be requested, and there=s a policy that you have to  
18 go through.

19          MR. LEIBOWITZ: And they=re not done ad hoc  
20 because the county doesn=t want to spend the money when  
21 there isn=t a need.

22          MR. STARKEY: Correct.

23          MR. LEIBOWITZ: And so they install them when the  
24 county agrees with the citizenry that there is a need.

25          MR. STARKEY: It=s not an agreement. There=s a

1 warranting process. There=s a study, and it would have to  
2 be warranted. It would have to be documented.

3 MR. LEIBOWITZ: So, they=re only installed when  
4 they=re warranted?

5 MR. STARKEY: Correct.

6 MR. LEIBOWITZ: Okay. You said you were involved  
7 in other daycare TMPs. Right?

8 MR. STARKEY: Correct.

9 MR. LEIBOWITZ: Does your involvement stop after  
10 the project is completed or do you still keep in touch with  
11 the applicants and the neighborhood where the TMP is in  
12 place?

13 MR. STARKEY: To date, it has stopped after the  
14 application is completed because at this point, those  
15 projects are not open yet.

16 MR. LEIBOWITZ: Okay. The projects that you=re  
17 involved in that don=t also have a TMP are still ongoing.  
18 Is that what you said?

19 MR. STARKEY: Correct.

20 MR. LEIBOWITZ: Okay. So, you don=t have anyway  
21 of knowing right now whether those TMPs have been effective  
22 or not because they haven=t actually been put in place.

23 MR. STARKEY: That=s correct.

24 MR. LEIBOWITZ: Okay. Would you agree that the  
25 county, the Montgomery County Police Department believe that

1 if pedestrians being struck by vehicles is a problem?

2 MR. STARKEY: Yes.

3 MR. LEIBOWITZ: -- and it=s a problem that they=ve  
4 been focusing on in the last couple of years?

5 MR. STARKEY: Yes.

6 MR. LEIBOWITZ: Even in places where there are  
7 crosswalks?

8 MR. STARKEY: I believe so.

9 MR. LEIBOWITZ: Okay. Do you want Ms. Quinn to  
10 ask questions or ask questions through me or I can --

11 EXAMINER: Ms. Quinn, if you have questions, it  
12 may be more efficient for you to ask them directly. You  
13 have to, again, this is not an opportunity -- this is not  
14 your time to testify. This is only your time to ask Mr.  
15 Starkey questions. All right?

16 MS. QUINN: Okay.

17 EXAMINER: But it may be more efficient just to  
18 allow you to ask the questions.

19 MS. QUINN: Okay.

20 MR. LEIBOWITZ: I=m going to turn it over to Ms.  
21 Quinn.

22 EXAMINER: Okay.

23 MS. QUINN: Thank you. Mr. Starkey, you mentioned  
24 that by not having access, a right turn and right out only  
25 from the University Boulevard curb cut to the site is

1 actually an advantage and that that would not be desirable  
2 for the neighborhood. Is that accurate?

3 MR. STARKEY: No. I said it=s not a disadvantage  
4 for the site.

5 MS. QUINN: It=s not a --

6 MR. STARKEY: It=s not a disadvantage.

7 MS. QUINN: Okay. But you are aware that there  
8 are other educational institutions and child care centers  
9 along University Boulevard that have a right turn and a  
10 right outgoing because they do not have access to the  
11 opposite side of University Boulevard?

12 MR. STARKEY: Yes. Yes.

13 MS. QUINN: I wanted to turn to -- do you recall  
14 the exhibits that were introduced? The photographs of  
15 existing traffic conditions in the area, Exhibit 150H?

16 MS. MEAD: Is this cross-examination on his  
17 testimony or is this testimony again.

18 EXAMINER: Well, it=s fair.

19 MS. MEAD: Okay. Okay.

20 EXAMINER: It=s an exhibit in the record. Can you  
21 show him 150H?

22 MS. QUINN: Yes.

23 EXAMINER: Now, do you have it? I can=t tell. Is  
24 it in front of you, Mr. Starkey

25 MR. STARKEY: Uh-huh.

1 EXAMINER: Okay. Now, can you ask your question  
2 again?

3 MS. QUINN: Okay. It=s actually different pages.

4 EXAMINER: Okay. Well, wait a minute. I --

5 MS. QUINN: So, I=ll have to refer to each  
6 specific photograph.

7 EXAMINER: Okay. Let me just find it.

8 MS. QUINN: Yes.

9 EXAMINER: Where I=m, okay. I have it. My copy.  
10 So, go ahead.

11 MS. QUINN: On the first page of the exhibit which  
12 is circle page 33, there are two photographs approaching  
13 Burnett Avenue from westbound University Boulevard.

14 MR. STARKEY: Okay.

15 MS. QUINN: And you notice that the traffic is  
16 backed up, and this is at 7:50 a.m. in the morning, weekday.  
17 Now, if someone were to need to turn left into Burnett where  
18 -- to enter this site, how long would they have to wait  
19 there with the queue back to Dennis Avenue?

20 MR. STARKEY: That=s a theoretical question that I  
21 can=t answer. I mean --

22 MS. QUINN: Okay. But --

23 MR. STARKEY: It just depends on the courtesy of  
24 the drivers that they=re waiting for.

25 MS. QUINN: It=s not a signalized intersection.



1 Correct?

2 MR. STARKEY: That=s correct.

3 MS. QUINN: Okay. So, if we look at your trip  
4 distribution rates which are on page 10 of your traffic  
5 study, it shows that -- I=m going to go to the map.

6 EXAMINER: Okay. Can you tell me what number  
7 exhibit you=re looking at?

8 MS. QUINN: His traffic study? No --

9 MR. STARKEY: We can just look at Exhibit 171.

10 EXAMINER: Oh. Oh. 171.

11 MR. STARKEY: Why don=t we just do that.

12 MS. QUINN: Well, I=m not talking about the -- I=m  
13 talking about the distribution percentage.

14 MR. STARKEY: I know but the distribution is shown  
15 on Exhibit 171.

16 MS. QUINN: Okay. I didn=t get a copy of that.  
17 So, I didn=t know that.

18 EXAMINER: Okay. All right.

19 MR. STARKEY: Okay. Here, I can give you a copy.

20 MS. QUINN: Okay.

21 MS. MEAD: Here I have a copy, too.

22 MS. QUINN: It shows the percentages. Oh. Good.  
23 Okay.

24 EXAMINER: All right.

25 MR. STARKEY: So everybody else has it?

1 MS. MEAD: Yes.

2 MS. QUINN: I didn=t get a copy.

3 MR. STARKEY: Everybody else has it in front of  
4 them?

5 EXAMINER: Okay.

6 MR. STARKEY: Why don=t you just stand up and tell  
7 them?

8 EXAMINER: Okay. Mr. Starkey, just a second.  
9 It=s going to --

10 MS. QUINN: Because I=m going to refer to this and  
11 then --

12 EXAMINER: Ms. Quinn?

13 MS. QUINN: Okay.

14 EXAMINER: I=m talking. Okay? All right. Do you  
15 have Exhibit 171?

16 MS. QUINN: Yes.

17 EXAMINER: Okay. Go. Proceed with your question.  
18 Now, you ask only a question. Mr. Starkey, you answer the  
19 question. Okay. Go ahead.

20 MS. QUINN: According to your trip distribution  
21 rates, the volumes coming from westbound University  
22 Boulevard, just westbound, are 35 percent of the volume. Is  
23 that correct?

24 MR. STARKEY: That=s correct.

25 MS. QUINN: And the volumes coming from southbound

1 or northbound 29 show 10 percent. Correct?

2 MR. STARKEY: That=s correct.

3 MS. QUINN: And in order for those volumes to get  
4 over to the site, they have to turn right onto University  
5 eastbound, go around the jug handle and end up on University  
6 westbound.

7 MR. STARKEY: That=s correct.

8 MS. QUINN: Is that correct?

9 MR. STARKEY: That=s correct.

10 MS. QUINN: So, that=s 45 percent of the trips.

11 MR. STARKEY: That=s correct.

12 MS. QUINN: And then from southbound 29 another 10  
13 percent.

14 MR. STARKEY: That=s correct.

15 MS. QUINN: So, that=s 55 percent of the volume  
16 coming to the site would be using westbound University  
17 Boulevard.

18 MR. STARKEY: That=s correct.

19 MS. QUINN: And presumably, would need to turn  
20 left at Burnett Avenue.

21 MR. STARKEY: That=s correct.

22 MS. QUINN: Which is unsignalized?

23 MR. STARKEY: Yes.

24 MS. QUINN: Okay. Now, if -- you had mentioned  
25 that --

1 EXAMINER: Turn left on the outbound trip, you  
2 mean.

3 MS. QUINN: To come into the site.

4 EXAMINER: Oh. To come into the site. Okay.

5 MS. QUINN: They=re heading west on University.

6 EXAMINER: Right.

7 MS. QUINN: And they have to turn --

8 EXAMINER: Right. Okay.

9 MS. QUINN: -- either left here or left on  
10 Lorraine and then right on Gilmore --

11 EXAMINER: Okay.

12 MS. QUINN: -- to get to the site. Now, traffic  
13 is backing up here at this intersection.

14 MR. STARKEY: That=s six. Thirty-five, and six  
15 plus two becomes eight.

16 EXAMINER: Well, you have to tell him what  
17 intersection you=re pointing to.

18 MS. QUINN: At the intersection of Burnett and  
19 University which I pointed out in the pictures. The traffic  
20 is backing up there. Is it possible that people will take  
21 another route to get to the site because they don=t want to  
22 wait at that intersection?

23 MR. STARKEY: Not at the site as much right there  
24 at that corner. I don=t believe so. No.

25 MR. LEIBOWITZ: I didn=t hear his answer. I=m

1     sorry.

2             EXAMINER:   Can you repeat it, Mr. Starkey?

3             MR. STARKEY:   With the site located directly at  
4     the intersection of University and Brunett --

5             EXAMINER:   Uh-huh.

6             MR. STARKEY:   -- I don=t believe people would  
7     choose another route.   No.

8             MS. QUINN:    So, if people are hesitant to cross  
9     over that rush hour queue that=s shown in the pictures in  
10    150H would they then be likely to take another route?

11            MR. STARKEY:   My statement remains the same.   I  
12    don=t believe so.   No.   You=re talking about one person  
13    every six minutes.

14            MS. QUINN:    Coming to the site?

15            MR. STARKEY:   Yes.

16            MS. QUINN:    And it=s possible you could wait six  
17    minutes at that intersection to turn over four lanes of  
18    traffic in rush hour.

19            MR. STARKEY:   I don=t believe so.   No.

20            MS. QUINN:    But there are alternatives for those  
21    people if they don=t want to wait there.   Correct?

22            MR. STARKEY:   People are turning into that.

23            MS. QUINN:    Well, so, for example if they=re  
24    having --

25            EXAMINER:    Well, just answer the question.   Are

1 there alternatives if they don=t --

2 MR. STARKEY: Yes.

3 EXAMINER: If they wish to avoid whether this is  
4 going to happen or not, there are alternatives.

5 MR. STARKEY: Yes.

6 EXAMINER: Okay.

7 MS. QUINN: And so for example, if they are coming  
8 northbound, sorry, southbound 29, they don=t necessarily  
9 have to turn right on University. They could continue down  
10 to Lanark Way and turn right and then turn up, turn north on  
11 Sutherland or one of the other northbound streets such as  
12 Lorraine and then turn left on Gilmoure to the site. Is  
13 that correct?

14 MR. STARKEY: That is possible. Yes.

15 MS. QUINN: And the same with traffic heading west  
16 on University. They don=t want to wait in the queue in the  
17 through lanes, they can make a left on southbound 29 and  
18 then turn right on Lanark Way. Correct?

19 MR. STARKEY: That is a possibility. Yes.

20 MS. QUINN: So, it=s possible that a significant  
21 portion of the 55 percent of the traffic that=s coming to  
22 the site may not wait at Burnett Avenue and University  
23 Boulevard. They may choose some other route to get to the  
24 site.

25 MR. STARKEY: That is a possibility.

1 MS. QUINN: Now, even though 55 percent of the  
2 vehicles were projected to come from westbound University,  
3 you do not study that portion of the intersection. Is that  
4 correct?

5 MR. STARKEY: That is correct.

6 MS. QUINN: So, your earlier statement that  
7 turning up Burnett into the site is the quickest way and  
8 that=s what everybody would do. That might not necessarily  
9 be true if there is a queue at the peak hour of 8:00 a.m.

10 MR. STARKEY: I don=t understand your question.

11 MS. QUINN: Well --

12 EXAMINER: I think he=s already said that there  
13 are other ways in. Are you asking him which way would be  
14 faster?

15 MS. QUINN: Well, he made the statement that that  
16 was the quickest way, and it might be the quickest way.

17 EXAMINER: Okay. I mean, you can ask him is it  
18 possible a quicker way would be --

19 MS. QUINN: Is it possible there is a quicker way  
20 if the traffic is backed up on eastbound University?

21 MR. STARKEY: I think you=ve asked me multiple  
22 different things. I said that is the most direct way. Are  
23 there other ways? I think I=ve said there are other  
24 possible ways to get there.

25 MS. QUINN: Okay. And your other statement that

1 that would be the route they choose because they=re not  
2 familiar with the neighborhood.

3 MR. STARKEY: All those other ways you talked  
4 about, unless you know those routes and you know that  
5 neighborhood, you=re not going to go that way.

6 MS. QUINN: Right.

7 MR. STARKEY: You have to be familiar with that  
8 community to do that, and unless you=re a resident, I doubt  
9 that you would know those routes. Mr. Leibowitz asked me to  
10 say, asked me about Lanark Way. He had to point it out to  
11 me for me to know where it was.

12 MS. QUINN: Okay. All right. But, would you  
13 agree that over time after someone has been attending the  
14 site daily for a period of months, it would not be very  
15 difficult for them to find an alternate route especially if  
16 they had a GPS in their car?

17 MR. STARKEY: Once again, the site is located --  
18 it has frontage to University Boulevard. There=s no reason  
19 for me to traverse the neighborhood when my destination is  
20 directly attached to the major road.

21 EXAMINER: Okay. Her question is, is it  
22 possible --

23 MR. STARKEY: It=s possible.

24 MS. QUINN: In order to avoid the congestion that  
25 people may choose to use an alternate route?



1           MR. STARKEY: Ms. Quinn, I'm sorry. You can ask  
2 me a thousand questions about this issue, and my answer is  
3 going to be it's possible. Is that my belief? No.

4           MS. QUINN: Thank you.

5           EXAMINER: Okay.

6           MS. QUINN: And you had also mentioned that after  
7 leaving the site, people would most likely turn right onto  
8 Gilmore and right onto Burnett to exit onto University  
9 Boulevard. Is that a correct --

10          MR. STARKEY: Yes.

11          MS. QUINN: -- statement that you made?

12          MR. STARKEY: Yes.

13          MS. QUINN: Okay. Now, if someone is heading to  
14 work in downtown Silver Spring or to the beltway or using  
15 the beltway to get to work, beltway westbound, or traveling  
16 to downtown Washington to get to work and they dropped off  
17 their child and they saw the queue on University Boulevard.  
18 Is it likely they might cut through the neighborhood to get  
19 to Lanark to get on the beltway which is right after Lanark  
20 or to get onto southbound 29 to get to Silver Spring Metro  
21 or downtown D.C. or what have you?

22          MR. STARKEY: Again, I'm sorry, Ms. Robeson, but  
23 all the --

24          EXAMINER: Well, this time, okay. This time she  
25 said is it likely.

1           MR. STARKEY: All these questions are asking the  
2 same issue. I'm sorry. But, my answers are not going to  
3 change.

4           EXAMINER: No. No. No.

5           MR. STARKEY: That=s not my belief. That=s not my  
6 opinion.

7           EXAMINER: Okay.

8           MS. QUINN: Well, there are two different issues.  
9 One is coming into the site and one is leaving the site.

10          MR. STARKEY: And my answers are going to be the  
11 same.

12          EXAMINER: Okay. Okay. I think what he=s saying  
13 is that there are -- the question before me is not just can  
14 it happen. The question for me is what=s the probability of  
15 it happening. The standard of proof here as far as cut-  
16 through traffic is a preponderance of the evidence which is  
17 51 to 49 percent, roughly. So, you have done an excellent  
18 job making the point that this is not full proof. The  
19 question here, and that=s what you=re supposed to do on  
20 cross-examination. This is not full proof. All right? And  
21 Mr. Starkey=s admitting to you that there are possible cut  
22 through trips. So, rather than going through every possible  
23 scenario, do you have any other issue that you=d like to  
24 address with Mr. Starkey?

25          MS. QUINN: Yes.

1 EXAMINER: Okay. Then, I would suggest that, and  
2 again, remember the question is not just is there a possible  
3 way but what is the probability of somebody doing that. All  
4 right?

5 MS. QUINN: All right.

6 EXAMINER: So, let=s move on to --

7 MS. QUINN: Okay. Well, if I could stick with the  
8 cut through topic without going through scenarios.

9 EXAMINER: Well, what=s your question?

10 MS. QUINN: Well, I wanted to refer back to the  
11 Woodmoor discussion paper which is a discussion paper about  
12 cut-through traffic avoiding Four Corners and the percentage  
13 of traffic in our neighborhood.

14 EXAMINER: Okay. That=s okay. And can you say  
15 what exhibit number you=re referring to?

16 MS. QUINN: Yes.

17 EXAMINER: And make sure Mr. Starkey has that  
18 exhibit in front of him.

19 MS. QUINN: I=m referring to Exhibit 150C,  
20 excerpts from Woodmoor/Pinecrest discussion paper.

21 MR. STARKEY: The other one?

22 EXAMINER: Which circle?

23 MS. QUINN: Well, it starts at circle 16.

24 EXAMINER: Okay.

25 MS. QUINN: Are you familiar with this exhibit

1 that was introduced in December, Mr. Starkey?

2 MR. STARKEY: I recall it being introduced but I  
3 have not read it.

4 MS. QUINN: And so you=re aware that the  
5 Woodmoor/Pinecrest neighborhood is involved with a study  
6 with the Montgomery County Department of Transportation to,  
7 first of all --

8 MR. STARKEY: I recall you saying it=s not  
9 complete.

10 MS. QUINN: Right. But to evaluate the level of  
11 cut-through traffic first and then to come up with remedies  
12 to help relieve the amount of cut-through traffic.

13 MR. STARKEY: Okay.

14 MS. QUINN: Okay? And that the phase that the  
15 community is in has passed the evaluation phase and all the  
16 traffic measurements and is now in the community discussion  
17 paper phase to evaluate various alternatives --

18 EXAMINER: Okay. Is this a question?

19 MS. QUINN: I just want to make sure he=s aware of  
20 the purpose of the --

21 EXAMINER: Okay.

22 MS. QUINN: -- the study.

23 EXAMINER: All right. Are you --

24 MR. STARKEY: Okay.

25 EXAMINER: Okay. That means you=ll accept what

1 she --

2 MR. STARKEY: I=m accepting that.

3 EXAMINER: You=re not personally aware.

4 MR. STARKEY: Aware. But, I=m accepting what  
5 she=s saying.

6 MS. QUINN: Well, if you want to take time to  
7 review?

8 EXAMINER: No.

9 MR. STARKEY: NO.

10 EXAMINER: I think that we will just go on the  
11 assumption that what his testimony is going to be based on  
12 the assumption that what you=re saying is correct.

13 MS. QUINN: Okay. And so the purpose of the  
14 study, as you understand is that there is a significant  
15 amount of cut-through traffic in the Woodmoor neighborhood  
16 that is trying to avoid the intersection at Four Corners.

17 MS. MEAD: Is that in the executive summary or the  
18 introduction or --

19 MS. QUINN: Yes.

20 EXAMINER: If you know.

21 MR. STARKEY: I think I have that understanding.

22 MS. QUINN: Thank you.

23 EXAMINER: Well, wait a minute.

24 MS. MEAD: Is there a question?

25 EXAMINER: Yeah.

1 MS. QUINN: Just that he=s aware that this study  
2 is ongoing and that it=s related to --

3 EXAMINER: Well, I=m not sure he does. Do you  
4 know that, Mr. Starkey? Do you know the status of this  
5 study? Because it --

6 MR. STARKEY: No. I just know she brought up the  
7 fact that there is this study and that it=s ongoing.

8 EXAMINER: So, you=re basing your knowledge on her  
9 knowledge.

10 MR. STARKEY: Right.

11 EXAMINER: So, you don=t have any personal  
12 knowledge?

13 MR. STARKEY: No.

14 EXAMINER: Okay.

15 MS. QUINN: Just the knowledge of the --

16 EXAMINER: Okay. He doesn=t have any personal --  
17 he can only testify to what he has personal knowledge of. I  
18 think you brow beat him into submission.

19 MS. MEAD: It=s in the record as a study for that  
20 purpose. That=s what she submitted it for. So, we=ll  
21 agree.

22 EXAMINER: But, what I need to make sure of is  
23 this isn=t your chance to testify simply by asking him to  
24 confirm what he doesn=t know. All right? Do you follow  
25 what I=m saying?

1 MS. QUINN: Well, I guess my question is was he  
2 present during the testimony regarding this exhibit?

3 EXAMINER: Okay. And have we finished -- what are  
4 you trying to get at?

5 MS. QUINN: I just wanted to see if he recognizes  
6 that there is a problem with cut-through traffic avoiding  
7 the Four Corners intersection in the Four Corners  
8 neighborhood.

9 EXAMINER: Do you recognize that?

10 MR. STARKEY: Yes. I recognize that.

11 MS. QUINN: Now, in your testimony just now you  
12 mentioned that the critical lane volumes from the January  
13 2009 state highway turning movements, you thought they were  
14 a blip. Is that correct?

15 MR. STARKEY: They appeared to be --

16 EXAMINER: Well, that was my characterization.  
17 That wasn't his characterization.

18 MS. QUINN: Oh. Okay. Well, I don't mean to  
19 characterize your testimony.

20 MR. STARKEY: Okay.

21 MS. QUINN: That it was an unusual number for the  
22 intersection.

23 MR. STARKEY: They appeared to be abnormal for the  
24 location based upon other tasks.

25 MS. QUINN: And you're referring to the

1 intersection at University eastbound. Correct?

2 MR. STARKEY: That=s correct.

3 MS. QUINN: Okay. And you=ve reviewed the other  
4 critical lane volumes that were entered into the case in  
5 December?

6 MR. STARKEY: Are you talking critical lane  
7 volumes or are you talking turning limits?

8 MS. QUINN: Critical lane volumes.

9 MR. STARKEY: Okay.

10 MS. QUINN: And I think --

11 MS. MEAD: If you could refer to which one in  
12 December that were submitted.

13 EXAMINER: Or tell us where they are in the  
14 exhibits.

15 MS. QUINN: Well, the 2011 mobility report? I  
16 believe you, and correct me if I=m wrong. I believe in your  
17 previous testimony just now, on page 12 of the mobility  
18 assessment report for 2011 which the full report was just  
19 given today.

20 MS. MEAD: Circle 4 of the admitted one.

21 EXAMINER: Oh. Oh. I see. Okay. The October  
22 2011. So, it=s 164? The October 2011 report?

23 MS. QUINN: Yes.

24 EXAMINER: Okay. And what page?

25 MS. QUINN: Page 12 of the report.



1 EXAMINER: Okay.

2 MS. QUINN: Not circle 12 but just page 12.

3 EXAMINER: Uh-huh.

4 MS. QUINN: It shows the critical lane volumes for  
5 the various intersections.

6 EXAMINER: Okay.

7 MS. QUINN: Oh. You=re there. I=m sorry. Okay.  
8 So, 19 shows the critical lane volume at 1680. Is that the  
9 volume you=re referring to that is not typical for that  
10 intersection?

11 MR. STARKEY: That=s not a volume. That=s a  
12 critical lane number.

13 MS. QUINN: Right. You=re saying that that CLV is  
14 not typical for that intersection?

15 MR. STARKEY: You=re talking apples and oranges.  
16 That=s why I asked you the question. I was talking about  
17 the turning number volumes, not the CLVs.

18 MS. QUINN: Okay. That=s what I wanted to --

19 MR. STARKEY: One is the product of the other. I  
20 was talking about the volumes not the CLV number.

21 MS. QUINN: Okay. So, you=re not suggesting that  
22 this CLV number is not typical for that particular  
23 intersection?

24 MR. STARKEY: You=re talking apples and oranges,  
25 Ms. Quinn. Okay?

1 MS. QUINN: I=m just asking you about critical  
2 lane volume. Is the volume of 1680 at that intersection  
3 atypical for this intersection based on other studies?

4 EXAMINER: Okay. Just answer her question.

5 MR. STARKEY: I can=t answer that question because  
6 she=s not -- she=s asking me the wrong question,

7 EXAMINER: Well, no. That=s not for you --

8 MS. MEAD: Maybe Mr. Starkey could --

9 EXAMINER: I understand. Your attorney will clear  
10 it up.

11 MR. STARKEY: Okay.

12 EXAMINER: Okay? Because you=re saying apples and  
13 oranges but what I need you to focus on is just her question  
14 and then your attorney is going to give you an opportunity  
15 to tell us why it=s apple and oranges. Okay? So, her  
16 question is, is the CLV typical for that -- what? Rephrase  
17 your question?

18 MS. QUINN: Just the January 22, 2009 CLV volume  
19 for Colesville Road at University Boulevard --

20 EXAMINER: Wait. You=re on the 2000, which one?

21 MS. QUINN: I=m sorry. The count date is -- the  
22 report is 2011.

23 EXAMINER: Okay.

24 MS. QUINN: 19 reflects a count date of January  
25 22, 2009.

1 EXAMINER: Okay.

2 MS. QUINN: Okay.

3 EXAMINER: And it lists 1680 as the CLV, and your  
4 question is?

5 MS. QUINN: My question is, is that unusual? Is  
6 that an unusual critical lane volume for that portion of the  
7 intersection?

8 MR. STARKEY: Once again --

9 EXAMINER: Don=t go into apples and oranges.

10 MR. STARKEY: The critical lane volume is not a  
11 typical or nontypical.

12 MS. MEAD: If you know. If you know if it=s  
13 typical.

14 MR. STARKEY: I don=t know.

15 MS. QUINN: Based on previous --

16 MR. STARKEY: I don=t know.

17 MS. QUINN: Based on previous studies that are in  
18 the department --

19 MR. STARKEY: I do not know.

20 MS. QUINN: So, you haven=t looked at any other  
21 critical lane volumes for that intersection other than the  
22 one that you did?

23 MR. STARKEY: It is not similar to the critical  
24 lane volume that I had.

25 MS. QUINN: I realize that.

1 MR. STARKEY: That=s my answer.

2 EXAMINER: Okay.

3 MS. QUINN: Oh. Okay. Would you be surprised to  
4 learn that all other critical lane volumes that have been  
5 shown in the mobility reports dating from Park and Planning  
6 at this particular intersection, dating back to all of those  
7 available --

8 MS. MEAD: Are they in the record?

9 MS. QUINN: -- back to 2004. They=re public  
10 documents.

11 EXAMINER: She can ask him if he=s aware.

12 MS. QUINN: Would it surprise you to learn that  
13 all of those volumes are above the 1600 threshold.

14 MR. STARKEY: Are you aware that --

15 EXAMINER: No. No.

16 MS. MEAD: Just answer the question.

17 EXAMINER: You have to answer the question. I  
18 know exactly what you=re experiencing but if you could just  
19 answer the question are you aware?

20 MS. QUINN: Well, no. Would it surprise you to  
21 learn?

22 EXAMINER: Okay. Would it surprise you to learn?

23 MS. QUINN: Since he says he=s not aware.

24 MR. STARKEY: It would not surprise me to learn  
25 that. But, you have to also understand that in critical

1 lane volumes in those reports are influenced by the geometry  
2 that was in place at the time of those reports. The  
3 geometry of that intersection has changed over time. So,  
4 the critical lane volumes will change over time, in kind.

5 EXAMINER: Okay.

6 MS. QUINN: Has the geometry of the intersection  
7 changed since 1998?

8 MR. STARKEY: I would have to check the records.  
9 But I can=t --

10 EXAMINER: You don=t. So, you=re saying you don=t  
11 have personal knowledge as to the --

12 MR. STARKEY: Not off the top of my head.

13 MS. QUINN: Do you have a time frame on when you  
14 think the geometry of the intersection changed?

15 MR. STARKEY: No, Ms. Quinn. I do not. What I  
16 can say is that staff reviewed all of this information, and  
17 they are in concurrence with myself that the volumes that I  
18 collected and the tabulations that I made are accurate for  
19 the intersection.

20 EXAMINER: Okay. All right. That=s not the  
21 question, though. The question is do you know when --

22 MR. STARKEY: No. I do not.

23 EXAMINER: Okay. Go ahead, Ms. Quinn.

24 MS. QUINN: Okay. You presented this exhibit  
25 today, SHA, State Highway letter dated November 23rd --

1 EXAMINER: Do you have a number? It would be 173  
2 or 174. So --

3 MS. MEAD: 174.

4 EXAMINER: It will be 174.

5 MS. QUINN: Thank you. Did you receive any other  
6 information from state highway in the course of this  
7 development project?

8 MR. STARKEY: No.

9 MS. QUINN: No. Just this traffic impact  
10 statement, letter is the only correspondence you received  
11 from them.

12 MR. STARKEY: Yes.

13 MS. QUINN: Is that accurate? And is their  
14 statement accurate that says that the SHA policy regarding  
15 intersection level of service requires that all  
16 intersections function at a level service of D or better in  
17 the design year with full build-out of the given project.  
18 Given that the Montgomery County policy differs from that of  
19 SHA regarding the need for mitigation at off site  
20 intersections, the SHA will defer to the local criteria. Is  
21 it accurate to say that the State Highway Administration=s  
22 criteria for labeling what=s known as a failing intersection  
23 is different than Montgomery County?

24 MR. STARKEY: That=s what the statement says.  
25 Yes.

1 MS. QUINN: Okay. And State Highway  
2 Administration has jurisdiction over Route 29 and 193. Is  
3 that correct?

4 MR. STARKEY: Those are both two state maintained  
5 roads. Yes.

6 MS. QUINN: So, SHA never evaluated the safety of  
7 increased volumes turning at Burnett Avenue without a  
8 traffic signal. They only evaluated your traffic counts.  
9 Is that correct?

10 MR. STARKEY: That=s correct.

11 MS. QUINN: Okay. And then you mentioned you had  
12 done some counts in February 2009?

13 MR. STARKEY: Yes.

14 MS. QUINN: Are they in the record?

15 MR. STARKEY: I don=t believe we put those in the  
16 record.

17 MS. QUINN: Okay. So --

18 EXAMINER: I=m sorry. Did you say they were or  
19 they weren=t?

20 MR. STARKEY: I don=t if we put them in the record  
21 today or not.

22 EXAMINER: And, go ahead.

23 MS. QUINN: Okay.

24 EXAMINER: What=s your question?

25 MS. QUINN: My question is you had first requested

1 the scope for the traffic study January 8, 2009. Is that  
2 correct?

3 MR. STARKEY: I don=t recall the exact date.

4 MS. QUINN: Okay. The letter=s in your --

5 EXAMINER: Let=s not spend time looking for the  
6 letter. I think the letter speaks -- do you know the date?

7 MS. QUINN: Yes. That=s the date of the first  
8 letter, his first request, and then you didn=t receive a  
9 response back so you made a second request from Park and  
10 Planning to receive a scope for the project. Is that  
11 correct?

12 MR. STARKEY: I guess so. You=re telling me. You  
13 researched it. So --

14 MS. MEAD: Your traffic studies.

15 MS. QUINN: Well, I=m talking about your exhibit.  
16 So --

17 EXAMINER: Can you tell me where you=re going with  
18 this?

19 MS. QUINN: I=m addressing the issue on the scope,  
20 when the counts were done, and his February counts that I  
21 wasn=t even aware of.

22 EXAMINER: Okay. Well --

23 MS. QUINN: Just want to establish a time frame --

24 EXAMINER: Okay.

25 MS. QUINN: -- on when this study was done.



1 EXAMINER: Okay.

2 MS. QUINN: So, if I could just --

3 MR. STARKEY: If you want me to answer that, can I  
4 just answer that question --

5 EXAMINER: Yeah.

6 MR. STARKEY: -- as opposed to her going through  
7 this?

8 MS. QUINN: Well, can I ask the question?

9 EXAMINER: Well, let her ask it.

10 MR. STARKEY: Okay.

11 EXAMINER: But, do get to the point.

12 MS. QUINN: I will.

13 EXAMINER: Because, you know, rereading or reading  
14 statements from what's already in the record, you know, you  
15 need to try to move on.

16 MS. QUINN: Okay.

17 EXAMINER: Okay?

18 MS. QUINN: This is my final --

19 EXAMINER: No. I don't want to make you feel  
20 dampened, but we do have to get through it.

21 MS. QUINN: Yes. So, Park and Planning had  
22 already done a study, already had a study in January 2009  
23 that showed critical lane volume at the intersection that  
24 you studied. We just talked about it in the 2011 mobility  
25 report. Is that correct?

1 MR. STARKEY: Could you repeat the question?

2 MS. QUINN: Park and Planning and a volume count  
3 in January 2009 at the southbound 29 and eastbound  
4 University intersection that we just discussed in the 2011  
5 mobility report, the critical lane volume?

6 EXAMINER: Is that the intersection 19?

7 MS. QUINN: Yes.

8 EXAMINER: In Exhibit 164. So, it would be page  
9 -- do you know the page, Ms. Quinn?

10 MS. QUINN: Oh. I'm sorry. Page 12 of the 2011  
11 report.

12 EXAMINER: Okay. If you can direct his attention.  
13 Mr. Starkey, can you or --

14 MR. STARKEY: Okay. Go. What's the question?

15 EXAMINER: Okay.

16 MS. MEAD: We have it.

17 MS. QUINN: So, you would agree that Park and  
18 Planning had a volume count in January 2009 at this  
19 intersection.

20 MR. STARKEY: Okay.

21 MS. QUINN: Okay? And you received the scope, and  
22 now this is the first time I learned that you did a count in  
23 February 2009. Is that correct? You did a count in  
24 February 2009?

25 MR. STARKEY: Yes.

1 MS. QUINN: But that wasn=t used in this study?

2 MR. STARKEY: No.

3 MS. QUINN: Okay. But it would have been  
4 acceptable for you to use the count that had already been  
5 done because those are valid for a year.

6 MR. STARKEY: No. It was not. That=s why I had  
7 to do new counts.

8 MS. QUINN: No. I mean, it would have been  
9 acceptable for you, for Park and Planning to accept the  
10 count they already had as a count for that intersection.

11 MR. STARKEY: Once again. No. That=s why I had  
12 to do new counts.

13 MS. QUINN: No. I would --

14 MS. MEAD: I don=t think you=re understanding her  
15 question.

16 EXAMINER: Yeah. I don=t understand.

17 MS. MEAD: I can --

18 MS. QUINN: I=m not referring --

19 MS. MEAD: I think I can clarify it.

20 EXAMINER: Yeah. Hey. Jump in. No, actually,  
21 Ms. Quinn, what are you asking, just straight up? What are  
22 you asking?

23 MS. QUINN: Park and Planning had a volume in  
24 January 2009 at that very intersection. So, it wasn=t  
25 necessary to study that intersection again within a year.

1 EXAMINER: And?

2 MS. QUINN: They could have, and in our --

3 MS. MEAD: And we don=t agree with that statement.

4 MS. QUINN: In our opinion, should have studied  
5 the whole intersection either by using this part, this CLV,  
6 this study for the southern leg and have the applicant --

7 EXAMINER: Oh. You=re saying that he should have  
8 relied on this count in here.

9 MS. QUINN: He could have relied on it.

10 EXAMINER: He could have relied --

11 MS. QUINN: Park and Planning, when they assigned  
12 the scope, could have relied on that and then assigned the  
13 scope to look at --

14 EXAMINER: The northern leg.

15 MS. QUINN: -- the northern leg and then they  
16 would have the full picture.

17 MS. MEAD: But there=s --

18 EXAMINER: Just a second. Okay. Now --

19 MS. QUINN: So, I=m trying to understand. I  
20 didn=t even know there was a February count in between that  
21 the applicant did. I don=t know, and I guess I=m wondering  
22 why that wasn=t used.

23 EXAMINER: Okay. Well, can you respond --

24 MR. STARKEY: Yes.

25 EXAMINER: -- why it wasn=t used? That February

1 count?

2 MR. STARKEY: The date of my study is October  
3 2010.

4 EXAMINER: Uh-huh.

5 MR. STARKEY: Okay? So a count from January 2009  
6 is more than a year old when I submitted this study.  
7 Therefore, that count would have not been acceptable. Okay?

8 MS. QUINN: So, my --

9 MR. STARKEY: That=s the answer.

10 MS. QUINN: My question is what happened to the  
11 February numbers?

12 MR. STARKEY: February >09 to February 2010 is one  
13 year. Correct?

14 MS. QUINN: I know. I=m wondering why --

15 EXAMINER: He=s saying, okay. Your question is  
16 why didn=t they introduce the February numbers?

17 MS. QUINN: Why didn=t the applicant use the  
18 February numbers? Because --

19 EXAMINER: Because what they=re saying is they  
20 can=t use them because they=re more than a year old. Do you  
21 see what I=m saying?

22 MS. QUINN: I guess I=m wondering how it became a  
23 year old. Was there a delay?

24 MS. MEAD: We didn=t submit our application until  
25 August 2010.

1 MS. QUINN: Okay. So, there were other delays  
2 unrelated to the traffic study?

3 EXAMINER: Yes.

4 MS. QUINN: Okay.

5 EXAMINER: Have we cleared that up for you?

6 MS. QUINN: Yes. But again, so the volumes you  
7 studied in February were still at the same location that  
8 your April 2010 volumes were at. Is that correct?

9 MR. STARKEY: Yes.

10 MS. QUINN: So, even though Park and Planning=s  
11 only -- even though their most -- the numbers that they had  
12 for the northern section of the intersection dated back to  
13 2006. They did not assign that part to the scope. Is that  
14 correct?

15 MR. STARKEY: They didn=t assign it. No. They  
16 didn=t assign it.

17 MS. QUINN: All right. Thank you. That=s all I  
18 have.

19 EXAMINER: Well, thank you. You have missed your  
20 calling, I think, and thank you, Mr. Starkey. I know it is  
21 frustrating. I think it=s Montgomery County=s fault because  
22 they have such complicated statutes that it=s difficult to  
23 understand. In any event, Ms. Mead, I=m sure you have  
24 redirect. I have one question for you before we go to  
25 redirect. How many more witnesses do you have?

1 MS. MEAD: I have an answer for you and then I  
2 have a question for you. We have one more after Mr. Starkey  
3 but I would request that we take a break?

4 EXAMINER: That=s fine. It=s a quarter to 2:00,  
5 and I know skinny people have trouble making it this long  
6 through hearings. So, we=re going to take, okay. But, let  
7 me do find out before I decide how long we=re going --

8 MS. MEAD: With Mr. Sekerek after I ask Mr.  
9 Starkey.

10 EXAMINER: And that=s your last witness?

11 MS. MEAD: Yes.

12 EXAMINER: Okay. Now, do both of you have closing  
13 arguments?

14 MR. LEIBOWITZ: I do.

15 MS. MEAD: Yes. I certainly do. I guess whether  
16 we give them today kind of depends on whether that new  
17 exhibit, all that information, is going to be into the  
18 record.

19 EXAMINER: Which new exhibit? 164?

20 MR. LEIBOWITZ: 163 you mean? The e-mail?

21 MS. MEAD: The e-mail. More of the contents of  
22 the e-mail less the attachments but --

23 EXAMINER: The 159 e-mail or?

24 MS. MEAD: Yes. The one from last night.

25 EXAMINER: Oh. The one Ms. Quinn submitted?

1 MS. MEAD: Right. From last night.

2 EXAMINER: Oh. Okay.

3 MS. MEAD: I just don=t know if I need to be  
4 addressing them through Mr. Starkey or submission or in my  
5 closing.

6 EXAMINER: Well, let me review it while we=re on  
7 break and see if he hasn=t already addressed it because I  
8 still haven=t had the opportunity to read it fully. I did  
9 read some of the points you were making. So, let me look at  
10 that on break and see.

11 MS. QUINN: Can I ask what the problem might be in  
12 accepting it?

13 EXAMINER: Well, she hasn=t had the opportunity to  
14 rebut it.

15 MS. MEAD: Right. Well, and it read like  
16 testimony not like responses to or questions to Mr. Eapens.

17 EXAMINER: Right. But, the record is still open.  
18 I mean, right now, anybody could submit a letter. The  
19 record is still open. The public hearing is still open.  
20 So, anybody can submit a letter. The question is whether  
21 you have had the opportunity to rebut it, an adequate  
22 opportunity to rebut what she=s saying if you feel the need.  
23 Okay? And so, I am not inclined -- well, let me take a look  
24 at it over the break.

25 MS. QUINN: And if I could just add I was under



1 the impression that I could respond to Mr. Eapen=s  
2 statements, and my impression from the past was that having  
3 staff here was not necessarily desired. Although, I know  
4 you said we could have them.

5 EXAMINER: I did not say that.

6 MS. QUINN: Well, I mean from the first -- back in  
7 June when Ms. Mead requested their presence, I think it was  
8 implied that that=s not usually done. Now, I understand you  
9 said you could have them come to cross-examine. So, I was  
10 only doing it in the interest of time. If it would be  
11 better to have him come in person, that=s fine. I just was  
12 trying to -- his second e-mail was only received --

13 EXAMINER: Right.

14 MS. QUINN: -- a day or two ago, and I understand  
15 it was because there was some back and forth. So, I was  
16 just trying to respond to that.

17 EXAMINER: And that is fine. Have you read the  
18 full e-mail, Ms. Mead?

19 MS. MEAD: Just briefly this morning while trying  
20 to --

21 EXAMINER: Why don=t you review it over the break,  
22 too.

23 MS. MEAD: Okay.

24 EXAMINER: We=ll both review it.

25 MS. MEAD: Well, if we could take 45 minutes to an

1 hour for the break.

2 EXAMINER: I'll give you an hour.

3 MS. MEAD: Okay.

4 EXAMINER: And you can make a decision whether or  
5 not you want to object to it coming into the record.

6 MS. MEAD: Okay. Well, I think we'll still make  
7 the objection. I think it's just how -- if I'm going to  
8 have questions to try and respond to.

9 EXAMINER: I'll give you an additional opportunity  
10 to have Mr. Starkey respond to it. Okay?

11 MS. MEAD: Okay. Thank you.

12 EXAMINER: If you feel it necessary.

13 MS. MEAD: All right.

14 EXAMINER: All right? Okay. With that, before we  
15 all get too punchy, we're going to go into -- we'll be back  
16 at quarter to 3:00.

17 (Off the Record)

18 (On the Record)

19 EXAMINER: Okay. We're back on the record. Let's  
20 take Exhibit 163 which was Ms. Quinn's e-mail sent yesterday  
21 at midnight, just before midnight, and we'll make a  
22 determination as to whether that should be admissible. Do  
23 you want to be heard on that, Ms. Mead?

24 MS. MEAD: Again, we would have to go through each  
25 part of it as far as what our specific objections might be.

1 It may be more productive just if I ask Mr. Starkey  
2 questions from it. But, I overall object to the nature of  
3 it. It doesn't seem responsive to Mr. Eapen's comments. It  
4 does seem to be additional testimony but that's fine. We  
5 can just address it in Mr. Starkey's --

6 EXAMINER: Testimony?

7 MS. MEAD: -- rebuttal testimony.

8 EXAMINER: All right. So, I'm going to let it in.

9 MS. MEAD: But, I do have an objection to the --  
10 and still we don't -- the information from the 2004, 2006,  
11 and 2008 mobility reports just as far as their relevance and  
12 just for the fact that we don't have them before us as far  
13 as being able to let Mr. Starkey look at the count data for  
14 that and to assess what it does and doesn't show. So, we  
15 would object to those particular attachments.

16 EXAMINER: Okay. Do we, okay. Do we have  
17 excerpts of those in the record?

18 MS. MEAD: No. We have 2009 and 2011.

19 EXAMINER: Okay. Mr. Leibowitz, Ms. Quinn, do you  
20 want to be heard on that?

21 MS. QUINN: The purpose of the chart was to show  
22 the historic counts, all of the counts available from state  
23 highways, public records. The mobility reports are in the  
24 public domain. They're online. I did provide links to the  
25 others. I would be happy to -- well, I sent them last

1 night. So --

2 EXAMINER: And what are these attachments? What  
3 are they trying to show, these counts? What are you  
4 submitting them for? Where are these counts from?

5 MR. LEIBOWITZ: Just the --

6 MS. QUINN: Are we talking about the chart?

7 EXAMINER: Yeah.

8 MS. QUINN: The last chart?

9 EXAMINER: The chart. Yes.

10 MS. QUINN: Well, that was because different  
11 reports were submitted last time from excerpts from reports.  
12 I wanted to clarify where each of the CLV numbers came from.  
13 The majority of them came from the planning department's  
14 mobility reports, and I wanted to show the historic, the  
15 numbers for those two intersections, the two parts of the  
16 intersection that we've been talking about over time. So, I  
17 was just providing a convenient chart so that you could see  
18 from the different reports that were submitted what the CLVs  
19 were and for instance, that the planning department's been  
20 relying on the 2006 count. They're still relying on it in  
21 their mobility reports. So, I just wanted to show what the  
22 source was, who did the count, when they did the count, and  
23 what the CLV number was and then show the corresponding  
24 volume to capacity ratio. Anything over one is considered  
25 failing by the county. Anything of a level of service D or

1 higher, D, E, or higher than D, excuse me, is considered  
2 failing by the state. So, Mr. Eapen was implying that the  
3 county doesn't recognize the state's threshold numbers, that  
4 they have a different way of looking at it. So, I wanted  
5 to --

6 EXAMINER: Okay. Well, they do. They have a  
7 different method. Well, correct me if I'm wrong, Mr.  
8 Starkey. I did look at the transportation guidelines, the  
9 LATR guidelines --

10 MS. QUINN: Right. Right.

11 EXAMINER: -- while we were on break, and we used,  
12 and this is just my way. I don't know what they use for  
13 intersections, but they did use a highway capacity. They do  
14 use a different methodology for determining capacity of  
15 roadways. They don't use a critical lane volume analysis.  
16 But, I can ask Mr. Starkey to address this and correct me if  
17 I'm wrong. Also, and clearly in our methodology, in the  
18 county's methodology, we do use the critical lane volume  
19 analysis.

20 MS. QUINN: Right.

21 EXAMINER: We do not have an option of, as I read  
22 the LATR guidelines, which I did over the break, I do not  
23 see an option for using the state's standards or the state  
24 congestion level. They do have different congestion levels  
25 than the county does but I don't see that the option to use

1 those congestion levels for the purposes of local area  
2 transportation review.

3 MS. QUINN: I agree. If I could step back, go  
4 back for a second? This all started because prior to my  
5 testimony in December, I tried to contact Mr. Eapen who was  
6 the project manager for this, and I was not receiving a call  
7 back until I e-mailed him to say I had some follow-up  
8 questions. Well, first, as you recall, we requested a  
9 meeting with staff prior to their issuance of their last  
10 report, and did not get a response, and prior to that, even,  
11 I was trying to get in touch with Mr. Eapen. Okay. So, he  
12 did finally get in touch with me just before our last  
13 hearing and when I said could you explain why only one part  
14 of the intersection was scoped, he gave me an explanation  
15 that basically said they use their judgment sometimes.

16 EXAMINER: Uh-huh.

17 MS. QUINN: And I said can you provide me  
18 something in writing so that I can point to that in my  
19 testimony, and he didn't want to do that. He said only if  
20 the hearing examiner asks for an explanation. So, I'm just  
21 recalling what we discussed this last hearing. So, then you  
22 did follow-up with him and asked him for this information  
23 which resulted in his two e-mails. So, I, in turn, am  
24 responding to that. He's basically saying that Mr. Payne is  
25 no longer with the agency. He used his judgment to

1 determine that only that part of the intersection needed to  
2 be studied.

3 EXAMINER: Uh-huh.

4 MS. QUINN: And we are questioning that, and in  
5 our opinion, that's what my e-mail is about. In our  
6 opinion, we think that analysis is flawed. We think the  
7 scope is flawed. We think the analysis is flawed. Because,  
8 unless you study the whole Four Corners system, you're not  
9 getting the full scenario. You're not, for instance, if  
10 you're only studying the lower part of the southern leg,  
11 you're not accounting for any right turns off of southbound  
12 Colesville Road.

13 EXAMINER: Yes.

14 MS. QUINN: Okay. So, that's what this is about.

15 EXAMINER: I understand. I really do, okay. I  
16 really do understand what you're saying.

17 MS. QUINN: Okay.

18 EXAMINER: And I think you've had the opportunity.  
19 There's nothing in here that wasn't an issue as of December  
20 21st when Mr. Eapen responded to your report. Now, it looks  
21 to me that your data is not so different from what Mr.  
22 Starkey is testifying to because it does indicate that the  
23 capacity -- some of the counts are as I said -- we excluded  
24 counts before that were too old to be relevant. Do you  
25 remember that?

1 MS. QUINN: I remember you excluding the Blair  
2 High School project which was pre-construction of the jug  
3 handle, and I understand that. We did note that, for  
4 example, the Bank of America study which is in evidence and  
5 is a 2004 count was really -- you know, one of the problems  
6 is they don't have a lot of historical data that's in the  
7 public domain. So, these are the counts that the planning  
8 department is --

9 EXAMINER: Okay.

10 MS. QUINN: -- making available. There may be  
11 other studies that they --

12 EXAMINER: Well, I don't think they're hiding it.

13 MS. QUINN: No. No. I'm not suggesting that.

14 EXAMINER: I think they're making available what  
15 they have.

16 MS. QUINN: Right.

17 EXAMINER: So --

18 MS. QUINN: So, when you say it's old, it's really  
19 just a year old then the most recent --

20 EXAMINER: What you're saying is they're the  
21 counts that they're still using to some extent.

22 MS. QUINN: Well, the 2006 they're still using.

23 EXAMINER: Is definitely one. I don't know about  
24 the 2004.

25 MS. QUINN: And I'm providing that to show the



1 history of the counts over time.

2 EXAMINER: Yeah.

3 MS. QUINN: So, like if you look at the  
4 eastbound --

5 EXAMINER: Okay.

6 MS. QUINN: We had this discussion earlier. If  
7 you look at the eastbound chart, you can see that all of  
8 those volumes are above 1600 which is the threshold --

9 EXAMINER: Right.

10 MS. QUINN: -- from the county.

11 EXAMINER: Well --

12 MS. QUINN: Except for Mr. Starkey's analysis.  
13 So --

14 EXAMINER: Okay. And I understand and had you  
15 been an organization, testifying as an organization, there's  
16 a separate letter but it doesn't say -- are you speaking on  
17 behalf of the Woodmoor/Pinecrest Community Association?

18 MS. QUINN: Yes.

19 EXAMINER: Because, this type of data should have  
20 been submitted into the record at least 10 days prior to the  
21 hearing. And now, I cannot proceed and have Mr. Starkey try  
22 to answer questions about reports that he's never seen. So,  
23 I am going to exclude those reports that have not been in  
24 the record as far as this, and that would be the 2004  
25 mobility report.

1 MS. QUINN: Okay. But, can I just ask for a  
2 clarification, respectfully. When the applicant presents  
3 exhibits like here today, the TMP report that we haven't  
4 seen before and that's allowed in but this report is not. I  
5 guess, I'm trying to understand the distinction.

6 EXAMINER: Well, what they're doing is amending  
7 the petition. That's not a, what you would call, a study.  
8 They're amending their petition, and they can amend their  
9 petition up to a certain time frame. Now, I have -- just  
10 before you answer, I have to give 10 days notice of any  
11 motion to amend the petition which is why the record is  
12 going to stay open to see if there's any objections to them  
13 amending their petition. Okay? Because if they want to  
14 amend their petition, that's up to them but I have to give  
15 notice. As far as documents that you want to submit as  
16 evidence, that has to come in 10 days before the hearing  
17 because. and the reason there would be some circumstances, I  
18 would think, you know, there could be a possibility that we  
19 could leave the record open. My concern is that there's  
20 nothing in here that you couldn't have responded to based on  
21 staff's written comments on December 21st, and I'm not going  
22 to continue the hearing for another date because this is  
23 when this comes in. All right? Even --

24 MS. QUINN: When you say this, are you talking  
25 about the whole thing or just those mobility reports?

1 EXAMINER: The mobility reports.

2 MS. QUINN: Okay.

3 EXAMINER: Okay?

4 MS. QUINN: I understand --

5 MS. MEAD: There's an attachment that refers to  
6 the information in some of those reports which I don't have.

7 EXAMINER: Okay. So, I'm not going to leave the  
8 record open to permit additional testimony on those mobility  
9 reports.

10 MS. QUINN: Okay. May I just add that those -- I  
11 would assume that as a professional engineer, Mr. Starkey  
12 knows that those are available readily and not something --  
13 it's not like I'm, right now, submitting the Woodmoor report  
14 that only I have access, you know, only certain people have  
15 access to.

16 EXAMINER: Yes.

17 MS. QUINN: These are things that are out there.

18 EXAMINER: But, nobody knew, including me, that  
19 they were going to be relevant to this case. So, it's  
20 almost -- were I to let them in, I would be forced to have  
21 another hearing because I haven't read it. I'm not going to  
22 rule on something that I haven't read.

23 MS. QUINN: Okay. Then it's really just a chart.  
24 One page in the report. It's --

25 EXAMINER: Well, I'm not, okay. I understand.

1 But, I'm not going to allow the --

2 MS. QUINN: The 2004

3 EXAMINER: The 2004, and what else was it? I  
4 don't recall a 2008.

5 MS. MEAD: And the 2006 and the chart attached to  
6 the e-mail that includes numbers from those.

7 EXAMINER: I thought the 2006, oh. No. That was  
8 not in the record. It was 2009 --

9 MS. MEAD: And 2011.

10 EXAMINER: -- and 2011. In addition, I really do,  
11 I understand what you're saying about the intersection, but  
12 I do think that while they may or may not show a trend, it  
13 would seem to me the trend is going down not up.

14 MS. QUINN: Well, I would respectfully point out  
15 that, as I said in my e-mail, you will see some variation in  
16 the critical lane volumes over time depending on the time of  
17 year, or the day or something like that.

18 EXAMINER: Agreed.

19 MS. QUINN: But, it's important to look at whether  
20 it has a history of failing or a history of, you know, much  
21 lower volumes like D --

22 EXAMINER: Right.

23 MS. QUINN: -- versus F which it has a history of.  
24 F.

25 EXAMINER: Right. But --

1 MS. QUINN: So, that's just the point.

2 EXAMINER: But, that is, and I recommend you to  
3 take that discussion to a policy level because, and it  
4 sounds like you have. But, what I'm limited to look at  
5 under the code is a transportation analysis based on the  
6 LATR guidelines, and the Park and Planning's regulations on  
7 how that should be implemented. So, that's what I need to  
8 look at. You have had the opportunity to poke holes in the  
9 scope which was a very good point, and you've made many good  
10 points. But, at this late stage, I'm not going to  
11 introduce, you know, more information into the mix. Okay?

12 MS. QUINN: Yes.

13 EXAMINER: And as to be fair to Mr. Starkey, he  
14 can't respond, and I can't realistically respond either. I  
15 also noted -- so, aside from those -- back to -- aside from  
16 those mobility reports --

17 MS. MEAD: And the chart that references the  
18 numbers in there.

19 EXAMINER: Yes.

20 MR. LEIBOWITZ: I can address the chart issue.  
21 The chart is really just pulling the data out so that  
22 someone wouldn't have to cull through the hundreds of  
23 pages --

24 MS. MEAD: We don't necessarily agree with some of  
25 the numbers that are in here, though, for like data.

1 EXAMINER: Yeah.

2 MR. LEIBOWITZ: You may not agree with the numbers  
3 but they're taken straight out of the report.

4 MS. MEAD: I don't agree that they're taken  
5 straight out of the report.

6 EXAMINER: Well, I, just a second.

7 MS. MEAD: Yeah. Okay. Sorry.

8 EXAMINER: I understand your objections because I  
9 want to get through this.

10 MR. LEIBOWITZ: So, my point is simply it may not  
11 make a lot of sense to exclude it rather if the hearing  
12 examiner can use it as a reference and ignore the other data  
13 that was excluded or you can flip through the reports, I  
14 guess.

15 EXAMINER: Well, it's all in how they came up with  
16 the numbers, and I'm not willing just sitting here at this  
17 moment to say those are valid. They aren't valid. I don't  
18 have a basis for that. Do you understand what I'm saying?  
19 I don't know where these numbers came from except they're --  
20 what I've learned and what Ms. Quinn has accurately pointed  
21 out is just because it's in a 2009 mobility report that  
22 doesn't mean it's a 2009 number. So, no one has the  
23 opportunity here to figure it out as to what the basis for  
24 these numbers are and because of that and because it's the  
25 day of the hearing and nobody's really had a chance to

1 respond, I'm not going to let them in. Okay?

2 MS. QUINN: May I just make one final comment?

3 EXAMINER: Final. That's it.

4 MS. QUINN: That's why I did the chart so you  
5 could see the date of the document and the date of the count  
6 across the board.

7 EXAMINER: I understand that.

8 MS. QUINN: Okay.

9 EXAMINER: And I appreciate you are very  
10 efficient, and I really do, no. I really do commend you for  
11 a level of understanding that many, many citizens -- I can  
12 tell you've been doing this for a long time and commend you  
13 for a level of understanding that many people don't have,  
14 and I know you were trying to be helpful. But, legally, I'm  
15 not going to allow it in and have Mr. Starkey try to testify  
16 to something that he's never seen. Okay?

17 MS. QUINN: Yes.

18 EXAMINER: All right. Now, Ms. Mead, the rest of  
19 this report. It seems to me that it's a summary of what she  
20 has already presented except -- so, if you want to go bullet  
21 by bullet, we can decide what should be admitted and what  
22 shouldn't be admitted.

23 MS. MEAD: Or, we can just respond to it.

24 EXAMINER: Or if you think it's easier that he can  
25 respond to this, that's, you know, whatever is the easiest

1 for the parties. It may be a better option just to let Mr.  
2 Starkey respond if he can respond to these.

3 MS. MEAD: All right. And some of it, I apologize  
4 in advance that some of it may be repetitive of some of the  
5 questions I'd asked Mr. Starkey earlier. But, I just want  
6 to make sure we cover them. Mr. Starkey, are you familiar  
7 with Mr. Eapen=s response to the hearing examiner regarding  
8 the additional question on the Colesville/University  
9 Boulevard intersection?

10 MR. STARKEY: Yes. I am.

11 MS. MEAD: And, in your opinion, was the scope of  
12 the study, prepared originally by Mr. Payne and explained by  
13 Mr. Eapen, was that judgment in error?

14 MR. STARKEY: No. It was not.

15 MS. MEAD: Do you believe that all the movements  
16 -- that the additional intersections requested by the  
17 opposition needed to be included in the study and why or why  
18 not?

19 MR. STARKEY: The scope as provided by park  
20 planning staff was accurate and reflective of the trips  
21 generated by this site. The site, again, is generating less  
22 than 50 trips and they=re outwardly dispersed. The scope  
23 was reflective of the traffic generated by this site.  
24 Again, the Four Corners' system is not a single  
25 intersection. It is a group of intersections. So, you



1 know, the guidelines state you start a side access, you go  
2 through an intersection and you go one in each direction.  
3 Now, we went, you know, beyond a signalized intersection to  
4 come to the US 29 and University Boulevard intersection.  
5 So, I think that the scope was reflective of the traffic  
6 generated by this site.

7 MS. MEAD: Was the scope given by planning staff,  
8 was that done after the trip distribution and was it based  
9 on a certain percentage of the trips going through that  
10 intersection?

11 MR. STARKEY: No. Again, it's reflective of the  
12 number of trips not the distribution.

13 MS. MEAD: So, it would have been even at 100  
14 percent of the trips generated from this use all use that  
15 intersection, it was planning staff's judgment that it did  
16 not need to be included?

17 MR. STARKEY: That's correct.

18 MS. MEAD: The opposition referenced the January  
19 2009 count that's in the mobility report, the 1680, 1535  
20 numbers that have been used. Would you have used, even if  
21 this application was filed in 2009 within a year of that  
22 study and if it was available to you at the time, would you  
23 have used another party's counts?

24 MR. STARKEY: No. We would have conducted our own  
25 counts to ensure their accuracy and also because we had to

1 as part of the study, you have to also conduct pedestrian  
2 counts. There were no pedestrian counts associated with  
3 that count then.

4 EXAMINER: And which intersection is this?

5 MR. STARKEY: We're talking about University 29  
6 at, I mean Colesville Road at University Boulevard  
7 eastbound.

8 EXAMINER: Okay. Eastbound. Okay.

9 MS. MEAD: And since we're on that intersection,  
10 Ms. Quinn asked if, in your opinion, if the 1680 number was  
11 typical, would have you agreed that was typical for that  
12 intersection. If you could comment on that.

13 MR. STARKEY: Based upon the data we collected in  
14 February 2009 and again in April 2010, it was not typical of  
15 the results we found.

16 MS. MEAD: And do you have the information --

17 MR. LEIBOWITZ: I'm going to object. He's been  
18 referring to data that we've never seen. This other  
19 February, these February numbers, and if we can't refer to  
20 mobility reports that were produced late then I don't know  
21 why they can rely on --

22 MS. MEAD: We were just about to submit our 2009  
23 counts. They were relevant before since --

24 EXAMINER: Were these performed by your firm?

25 MR. STARKEY: Yes. They were.

1           EXAMINER: What I can't do, what I won't do is  
2 allow things in the record that have been generated by  
3 someone else unless state highway is here to testify. We  
4 have had a lot of time, lead time, in this case knowing that  
5 this intersection was an issue. So, I'm not going to --  
6 this is a letter that Ms. Quinn introduced for the first  
7 time the night before the hearing.

8           MR. LEIBOWITZ: I understand. This is data that  
9 we're getting at 3:15 on the day of the --

10          EXAMINER: That's true. But, you have the body  
11 here that did the data.

12          MR. LEIBOWITZ: Right. But now we have to digest  
13 it, and he's had this data for two, for three years.

14          MS. MEAD: Well, it's responding to the recent  
15 issues.

16          EXAMINER: But, he didn't know it was going to be  
17 relevant until midnight last night.

18          MR. LEIBOWITZ: He didn't know that the traffic  
19 count --

20          EXAMINER: This is in response to Ms. Quinn's,  
21 unless I'm missing something. This is in response to Ms.  
22 Quinn's letter that we received at midnight last night.

23          MR. LEIBOWITZ: He testified about these numbers  
24 in his testimony earlier today which wasn't in response to  
25 Ms. Quinn's testimony, and Ms. Quinn, on cross-examination,

1 said I never even knew that there was February 2009 data  
2 until today.

3 EXAMINER: What's the relevance of the February  
4 2009 data?

5 MR. STARKEY: Just that it validates my 2010 data.

6 EXAMINER: You mean it's similar.

7 MR. STARKEY: Consistent.

8 EXAMINER: And you already testified to that?

9 MR. STARKEY: Yes.

10 EXAMINER: Okay. Well, then I'm going to exclude  
11 this because there's no reason to argue it. Listen.

12 MS. MEAD: It's addressing the CLV issue that Ms.  
13 Quinn just --

14 EXAMINER: No. No. No. I'm talking. I'm not  
15 going to have this anymore. We're going to end this today.  
16 Do both of you understand?

17 MS. MEAD: Yes.

18 MR. LEIBOWITZ: Yes.

19 EXAMINER: Now, we've been going on this case for  
20 a month. This intersection has been a major issue, and I'm  
21 not going to take things the night of the fifth hearing, the  
22 night before whatever hearing, third, fourth, fourth hearing  
23 that we're on. No. We're not going to take anything. Now,  
24 you testified to them. I have your testimony in the record.  
25 I have no reason to doubt it. If you want to -- you've

1 already had the chance to cross-examine him on his  
2 testimony. So, I'm not taking anymore evidence unless it's  
3 already in the record and people have had the chance to look  
4 at it. All right?

5 MS. MEAD: I'm sorry. If you could repeat your  
6 response to the question about, regarding the 1680 number  
7 that Ms. Quinn had noted for the eastbound intersection for  
8 Colesville and University Boulevard.

9 MR. STARKEY: It was not typical of results that I  
10 found at the intersection.

11 MS. MEAD: Thank you. And what were the results  
12 of the count that you did at this intersection?

13 EXAMINER: Well, they're already in the record.  
14 Right?

15 MR. STARKEY: Yes.

16 MS. MEAD: Yes.

17 MR. STARKEY: Yes.

18 EXAMINER: And as I recall, they're under the  
19 limit.

20 MR. STARKEY: Yes. 1481 in the morning peak hour  
21 and 1355 during the evening peak hour.

22 MS. MEAD: And although not in the record, your  
23 testimony earlier did you indicate that you had 2009 counts  
24 that were consistent with those numbers?

25 MR. STARKEY: That is correct.

1 MS. MEAD: And in your opinion, does that show  
2 that there's a trend that the CLVs at that intersection are  
3 increasing or staying the same or getting lower?

4 MR. STARKEY: Staying the same.

5 MS. MEAD: Thank you. The opposition references  
6 their opinion that there's an increasing volume trend  
7 because of the FDA completing it's relocation up in White  
8 Oak. In your opinion, is there going to be an increasing  
9 volume trend at this intersection?

10 MR. STARKEY: In fact, I think there will be a  
11 decrease because of regional growth improvements in the area  
12 such as the Intercounty Connector. So, I think that region  
13 wide, volumes in this area will be decreasing because of  
14 things like the ICC and also because of the increased  
15 transit use.

16 MS. MEAD: The opposition references the SHA level  
17 of service and that the hearing examiner -- is the hearing  
18 examiner correct that you use the county's process for LATR  
19 reports?

20 MR. STARKEY: That's correct. And, in fact, the  
21 State Highway Administration defers to the county policies  
22 everywhere throughout the state not just Montgomery County.

23 MS. MEAD: The opposition written testimony  
24 submitted last night suggests that the bus rapid transit  
25 options in the area will not significantly reduce congestion

1 because it will encourage development which will add to the  
2 traffic. Do you agree that the bus rapid transit study will  
3 increase development?

4 MR. STARKEY: No. But what the BRT tests do is  
5 that they try to take advantage of high density areas and  
6 try to serve those areas through the use of high occupancy  
7 buses. They're not even trying to go to it. They're trying  
8 to cut its use through an area, not to these areas but  
9 through these areas.

10 MS. MEAD: Thank you. You had noted in your  
11 response to Mr. Leibowitz's questions that your traffic  
12 counts are based on the LATR counts provided to you for  
13 daycare uses from the county?

14 MR. STARKEY: That's correct.

15 MS. MEAD: But Mr. Leibowitz wanted you to use a  
16 hypothetical using 76 children and subtracting out 10  
17 children that may or --

18 EXAMINER: Sixty-eight.

19 MS. MEAD: Ten percent. Ten percent. Sixty-  
20 eight. Ten percent based on siblings. Are there other  
21 factors that impact --

22 MR. STARKEY: Yes.

23 MS. MEAD: -- how many cars are going into a site  
24 other than siblings?

25 MR. STARKEY: Yes. For any given use, you have

1 normal absenteeism through vacations, sick leave. You also  
2 have vacations and then and for any given use. Everyone  
3 doesn't arrive in the peak one hour. For example, typically  
4 50 to 60 percent of any use comes in a peak one hour. So,  
5 when you factor in people being sick, absent, and on  
6 vacation, you're not going to have 100 percent of these  
7 people coming in a peak one hour. So --

8 MS. MEAD: And of the samples that the county  
9 used, is there a likelihood that there is anyone who took a  
10 bus or walked to any of those daycare centers during those  
11 studies?

12 MR. STARKEY: It is probable but I don't know, you  
13 know, what that percentage could be.

14 MS. MEAD: So, in your opinion, is the  
15 hypothetical 68 families all arriving in the peak hour, is  
16 that realistic?

17 MR. STARKEY: It's very unlikely.

18 MS. MEAD: Thank you. Are trips to and from a  
19 daycare facility considered an inherent characteristic of a  
20 daycare facility?

21 MR. STARKEY: Yes.

22 MS. MEAD: If given the opposition's hypothetical  
23 that a particular vehicle along University Boulevard may  
24 notice traffic and want to take an alternate route, are  
25 alternate routes necessarily faster?



1           MR. STARKEY: Not necessarily. No. In fact, you  
2 could actually incur more congestion on some of the routes  
3 that Ms. Quinn described.

4           EXAMINER: Wait. I don't understand that. Can  
5 you explain that?

6           MR. STARKEY: For example, if you were traveling  
7 westbound on University Boulevard and decided to turn left  
8 onto US 29 to go into the neighborhood, you'd actually be  
9 caught, and you'd have to get in the right most lane to get  
10 on, for people easing onto the beltway, and that's one of  
11 the most congested lanes along that section of the road.

12          EXAMINER: I see what you're saying. Okay. You  
13 mean the right turn lane that turns into the beltway?

14          MR. STARKEY: Correct.

15          EXAMINER: On 29. Okay.

16          MS. MEAD: And using that -- February. What were  
17 the projection of trips that would want to be heading  
18 southbound on US 29 from the distribution provided by Park  
19 and Planning staff of traffic study?

20          MR. STARKEY: Two. Coming south on US 29 turning  
21 right on University Boulevard, the number's two. Two trips  
22 to the site.

23          MS. MEAD: And did Park and Planning staff review  
24 the concern regarding cut-through traffic in the  
25 neighborhood?

1           MR. STARKEY: Yes. In fact, in their December  
2 2010 memorandum which looked at 120 children, staff was  
3 under the opinion that the use would not create noticeable  
4 cut-through traffic, if any, through the neighborhood noting  
5 the inherent pass-by and the hereditary nature of daycare  
6 sites along the major roadways which would limit the new  
7 trips to this site.

8           EXAMINER: What was the basis for that  
9 recommendation? What was the basis for their conclusion? I  
10 can't recall. I know it's in the record.

11           MR. STARKEY: Isn't it because this type of use,  
12 as many pass by in the regular trips, there's no reason this  
13 might be going through the neighborhood because that's not  
14 where they're intending to be and with the site, it's  
15 location, again, adjacent to the major roadway, they're  
16 going to stay on that major roadway, go into the site, and  
17 get back onto the major roadways.

18           EXAMINER: Okay.

19           MS. MEAD: If the project was a few blocks into  
20 the neighborhood, would your opinion be the same as far as  
21 the --

22           MR. STARKEY: There would be a higher likelihood  
23 that they might use some of the neighborhood streets if it  
24 was further tucked into the neighborhood.

25           MS. MEAD: But, in your opinion, the location of

1 the site is the driver of your opinion for the cut-through  
2 traffic issue?

3 MR. STARKEY: Right. Because of its proximity.  
4 There's no reason to go into the neighborhood. If I'm on  
5 University Boulevard, and that's where I'm going to go back  
6 to, there's no reason for me to go through the neighborhood  
7 to get back on University Boulevard.

8 MS. MEAD: Okay. I think we've already asked and  
9 answered all the other issues.

10 EXAMINER: Okay. Any cross-examination either Ms.  
11 Quinn or Mr. Leibowitz based solely on the questions she  
12 just asked, Ms. Mead just asked?

13 MR. LEIBOWITZ: Just a couple questions.

14 EXAMINER: Okay.

15 MR. LEIBOWITZ: Mr. Starkey, you were asked if  
16 alternative routes are necessarily faster. You're answer  
17 was basically no. But, wouldn't you agree that it's not an  
18 issue of what is actually faster but what is perceived  
19 faster by the drivers?

20 MR. STARKEY: I'm not sure I understand your  
21 question.

22 MR. LEIBOWITZ: You were asked if alternative  
23 routes were necessarily faster. Do you remember that  
24 question?

25 MR. STARKEY: Yes.

1           MR. LEIBOWITZ: And your answer was no. Not  
2 necessarily. You gave the example of the right lane on 29  
3 south. Right?

4           MR. STARKEY: Yes.

5           MR. LEIBOWITZ: Okay. My question to you is isn't  
6 the actual inquiry not whether the alternative routes are  
7 actually faster but whether drivers, in this case, parents,  
8 taking or dropping their kids off to daycare perceive  
9 alternate routes to be faster. They may be wrong but isn't  
10 the issue whether they perceive other routes to be faster?

11          MR. STARKEY: I still don't understand what you're  
12 asking me.

13          EXAMINER: I think what he's saying is aside from  
14 the fact of whether it's really faster or not, are parents  
15 going to use cut through routes if they perceive that they  
16 can go faster? If they think they can go faster?

17          MR. STARKEY: That is a possibility.

18          EXAMINER: Okay.

19          MR. LEIBOWITZ: You testified that region wide,  
20 there's going to be a decrease in traffic because of the  
21 ICC. Right?

22          MR. STARKEY: Yes.

23          MR. LEIBOWITZ: Is it fair to say that the ICC is,  
24 I'll call it up county. Is that fair to say it's located up  
25 county as we use colloquial terms?

1           MR. STARKEY: Yes. Earlier when you talked about  
2 the Burtonsville site being 10 miles and then I heard Mr.  
3 Kay correct you saying it was 7.8 miles. The ICC is midway  
4 between these two locations.

5           EXAMINER: It=s midway between Burtonsville and  
6 this location?

7           MR. STARKEY: And the site. Yes.

8           MR. LEIBOWITZ: Okay. So, it's approximately 5  
9 miles away?

10          MR. STARKEY: Yes.

11          MR. LEIBOWITZ: Is it fair to say that people who  
12 are -- you think that most of the people using this facility  
13 will be taking University Boulevard one direction. Correct?

14          MR. STARKEY: Correct.

15          MR. LEIBOWITZ: So, people who are using  
16 University Boulevard one way or the other are unlikely to be  
17 taking the ICC which is five miles north of this. Right?

18          MR. STARKEY: I'm not certain. When I spoke of  
19 region wide traffic, I'm talking about region wide traffic.  
20 I'm not talking about local traffic. I'm saying that the  
21 ICC will help reduce volumes along the beltway which will  
22 help to increase the speeds and flow along 29 and University  
23 Boulevard thereby easing congestion at the intersections we  
24 have been discussing all day.

25          MR. LEIBOWITZ: Okay. So, your testimony is that

1 the ICC will decrease traffic on University Boulevard.

2 MR. STARKEY: That's not what I just said. No.

3 MR. LEIBOWITZ: So, the ICC won't decrease traffic  
4 along University Boulevard.

5 MR. STARKEY: I also did not say that.

6 MR. LEIBOWITZ: But I'm asking you, though.

7 MR. STARKEY: It has that potential.

8 MR. LEIBOWITZ: So, basically, your answer is it's  
9 possible.

10 MR. STARKEY: It is possible. Yes.

11 MR. LEIBOWITZ: Okay. But just sort of the same  
12 answer that you were giving in response to many of Ms.  
13 Quinn's and my questions earlier.

14 EXAMINER: Well, it is. So, go ahead.

15 MR. LEIBOWITZ: You testified that you were  
16 familiar with Mr. Eapen's memorandum dated December 20,  
17 2011. Correct?

18 MR. STARKEY: Yes.

19 MR. LEIBOWITZ: Okay. And are you familiar with  
20 the section that reads, and this is on page 3 of the  
21 memorandum. Thus, although strictly from an intersection  
22 count perspective, it appears that University Boulevard  
23 westbound and Colesville Road intersection typically would  
24 have been included in the traffic study.

25 MR. STARKEY: Okay.

1           MR. LEIBOWITZ: Okay. You're familiar with that.  
2 That it says that.

3           MR. STARKEY: It is in front of me at the moment.

4           MR. LEIBOWITZ: You said you were familiar with  
5 the memorandum.

6           MR. STARKEY: It's right in front of me, sir.

7           MR. LEIBOWITZ: Okay. So --

8           EXAMINER: Okay, guys. Just answer the question.  
9 I know you're frustrated but this is part of what we need to  
10 do, and your attorney's not objecting and I think that at  
11 this stage, it's faster even though you have a judgment on  
12 the question, I think that it's better just, you know, you  
13 need to answer the question. Okay?

14          MR. STARKEY: Can you repeat the question?

15          MR. LEIBOWITZ: Okay. Are you familiar with that  
16 part of the memorandum?

17          MR. STARKEY: Yes.

18          MR. LEIBOWITZ: Okay. Thank you. And would you  
19 agree that, essentially, the rest of the memorandum -- let  
20 me step back. Mr. Eapen did not give you the original  
21 scope. It was a different person. Right?

22          MR. STARKEY: That's correct.

23          MR. LEIBOWITZ: So, would you agree that Mr. Eapen  
24 is, I want to say guessing, but Mr. Eapen is creating a  
25 justification for what his former colleague's reason is for

1 not including an intersection that typically would have been  
2 included in the traffic study.

3 MR. STARKEY: Yes.

4 MR. LEIBOWITZ: Okay. And had it been included,  
5 you would have studied it.

6 MR. STARKEY: Yes.

7 MR. LEIBOWITZ: What wasn't included was the  
8 intersection of Lorraine and University Boulevard. Correct?

9 MR. STARKEY: Yes. That's correct.

10 MR. LEIBOWITZ: Because that's not a signalized  
11 intersection.

12 MR. STARKEY: Correct.

13 MR. LEIBOWITZ: And had that been included, you  
14 would have studied it also, of course.

15 MR. STARKEY: Of course.

16 MR. LEIBOWITZ: And you talked briefly about the  
17 rapid bus transit. Would you agree that there is dispute  
18 about whether or not that would increase or decrease  
19 congestion?

20 EXAMINER: If you know.

21 MR. STARKEY: Could you repeat that, please?

22 MR. LEIBOWITZ: Would you agree that there's a  
23 dispute among people interested and educated about traffic  
24 issues, whether the rapid bus transit would increase or  
25 decrease congestion?



1 MR. STARKEY: I do not know.

2 MR. LEIBOWITZ: Okay. But, your review is that it  
3 would decrease.

4 MR. STARKEY: Yes.

5 MR. LEIBOWITZ: Are you familiar with the, that  
6 there is a recent proposal to do more developments in the  
7 Wheaton area?

8 MR. STARKEY: I do not know.

9 MR. LEIBOWITZ: If the Wheaton area were developed  
10 more than it is now, would that increase or decrease traffic  
11 along University Boulevard?

12 MR. STARKEY: I would not know without doing some  
13 study.

14 MR. LEIBOWITZ: Does increased development and  
15 commercial activity typically increase or decrease traffic  
16 and congestion?

17 MR. STARKEY: Typically traffic will increase  
18 locally near the development.

19 MR. LEIBOWITZ: Okay. I have no further  
20 questions.

21 EXAMINER: Ms. Quinn, do you have anything  
22 further?

23 MS. QUINN: I just have a couple. Assuming all  
24 things being equal and the congestion at, say Route 29 south  
25 and Lanark is the same amount of congestion as University

1 Boulevard and Burnett, would you say it would be safer to go  
2 south on US 29, make a right turn on Lanark Way then it  
3 would be to wait at the intersection with Burnett and cross  
4 over three lanes of rush hour traffic at an unsignalized  
5 intersection?

6 MR. STARKEY: They would be the same based upon  
7 your conditions you stated. You said that conditions were  
8 equal. If conditions were equal, then I would say they  
9 would be the same.

10 MS. QUINN: In terms of travel time. I'm talking  
11 about assuming the travel time would be the same at each of  
12 those two intersections, would it be safer to turn right on  
13 Lanark Way from the right turn lane then it would be to turn  
14 left at Burnett crossing over three lanes of traffic in the  
15 opposite direction at an unsignalized intersection?

16 EXAMINER: Okay. Well, your question has nothing  
17 to do with travel times. You're asking which entry, which  
18 access point to the neighborhood is safer. Is that what  
19 you're asking?

20 MS. QUINN: Yes.

21 EXAMINER: Brunett or Lanark from Colesville? Is  
22 it --

23 MS. QUINN: Yes. Or westbound University. In  
24 other words, the volume --

25 EXAMINER: Brunett from west University or Lanark

1 from Colesville. Is that what you're asking?

2 MS. QUINN: From Colesville.

3 EXAMINER: Okay.

4 MS. QUINN: In other words, when I explained  
5 earlier that 55 --

6 EXAMINER: No. No. I understand. you already  
7 explained that so -- and I don't think that Mr. Starkey  
8 raised that on his response again.

9 MS. QUINN: He stated that most people would not  
10 get into the lane at Lanark Way because it's on the way to  
11 the beltway. It backs up. And what I'm asking is -- so, he  
12 said that more people --

13 EXAMINER: So, what you're getting at as I hear  
14 you is don't you think it's possible that people will still  
15 try that Lanark Way because it's a safer intersection?

16 MS. QUINN: Yes.

17 EXAMINER: Okay.

18 MS. QUINN: Rather than crossing over traffic in  
19 rush hour when there's no signal there.

20 EXAMINER: Okay. Mr. Starkey, that's your  
21 question.

22 MR. STARKEY: All right. I think I stated earlier  
23 that that's a possibility but no. I don't believe people  
24 will do that.

25 EXAMINER: Okay.

1 MS. QUINN: Okay. And with regard to additional  
2 transportation facilities like the ICC, BRT. Well, let's  
3 take BRT. If the BRT system --

4 EXAMINER: Well wait. I don't know what the BRT  
5 is.

6 MS. QUINN: I'm sorry. The bus rapid transit --

7 EXAMINER: Okay.

8 MS. QUINN: -- that they discussed is under --

9 EXAMINER: See, Montgomery County is too  
10 complicated for me. It's like the army. Too many acronyms.  
11 Go ahead.

12 MS. QUINN: The bus transit system that is, you  
13 know, being discussed. If that system took away existing  
14 travel lanes and made those lanes dedicated for buses only,  
15 do you still think that the congestion would decrease by  
16 having such a system?

17 MR. STARKEY: In these two corridors. There's no,  
18 they're not talking about closing lanes in these two  
19 corridors. They're talking about operating in the existing  
20 travel strip.

21 MS. QUINN: Actually, I guess I can't testify.

22 EXAMINER: No. You can't.

23 MS. QUINN: That is not true. But, if they  
24 were --

25 EXAMINER: Well, wait a minute. Where are you

1 going with this?

2 MS. QUINN: Well, he just said in his testimony  
3 that the bus transit systems that are being discussed, not  
4 even approved but being discussed, if they were implemented  
5 in the future, that that would decrease the congestion.  
6 That that would decrease the congestion, the ICCs going to  
7 decrease congestion.

8 EXAMINER: Okay. All right.

9 MS. QUINN: And since --

10 EXAMINER: Hold on. You're questioning whether  
11 congestion is really going to decrease in the future.

12 MS. QUINN: Yes.

13 EXAMINER: That's your basic question.

14 MS. QUINN: Yes.

15 EXAMINER: And I, you know, I let him, he has the  
16 ability to answer questions on hypotheticals. But, at this  
17 point, the hypotheticals are somewhat speculative, and  
18 because, you know, as you said, if you're correct, these  
19 studies are so preliminary to continue to cross-examine  
20 based on hypotheticals that may or may not happen. It loses  
21 its relevance to the case. Okay? So, yeah. It could be.  
22 It could not be. But, I don't have any evidence in front of  
23 me other than it could increase congestion and it couldn't  
24 and that's already in the record. So, I don't think it's  
25 worth while to pursue continuing hypotheticals along that

1 line.

2 MS. QUINN: Okay. I have no further questions.

3 EXAMINER: All right. Redirect?

4 MS. MEAD: Yes. Just have a few questions. Mr.  
5 Starkey, when you mentioned the ICC and the BRT, were you  
6 referring to them impacting the effect of this project on  
7 the local area road network?

8 MR. STARKEY: No. Actually, I'm talking about,  
9 again, regional wide traffic. Their impact on regional wide  
10 traffic and that it can help congestion levels throughout  
11 this area.

12 EXAMINER: In general.

13 MR. STARKEY: In general.

14 MS. MEAD: Was your question in response to my  
15 question about trends in the area?

16 MR. STARKEY: Yes.

17 MS. MEAD: And is future studies or roads is that  
18 part of your analysis for APF review?

19 MR. STARKEY: No.

20 MS. MEAD: And the excerpts that Mr. Leibowitz  
21 asked you if you were familiar with regarding Mr. Eapen's  
22 conclusions about the scope made by Mr. Payne, did Mr. Eapen  
23 write the staff reports for this traffic study?

24 MR. STARKEY: Yes. He did.

25 MS. MEAD: Did Mr. Eapen address questions on the

1 intersections contained in the traffic study in this  
2 December 2010 traffic report, a report of recommendation?

3 MR. STARKEY: Yes. He did.

4 MS. MEAD: Did Mr. Eapen address the citizens'  
5 questions about the Lorraine intersection in his 2001 report  
6 and recommendation?

7 MR. STARKEY: I do not recall specifically an  
8 issue about Lorraine. So --

9 MS. MEAD: And, again, hypothetically since it's  
10 been raised per your earlier testimony, you had noted that  
11 the north intersection was not included in your traffic  
12 report. Correct?

13 MR. STARKEY: That's correct.

14 MS. MEAD: But if it were to be included, what  
15 would be the CLV impact of this use?

16 MR. STARKEY: This use would have increased the  
17 CLV by three motorists.

18 MS. MEAD: And if it was, hypothetically, although  
19 your testimony is that you don't agree that it is and that  
20 it didn't show it wasn't. If it was above the threshold --

21 MS. QUINN: Objection. I guess I'm wondering why  
22 he can answer a hypothetical question --

23 EXAMINER: Okay. Okay. You know what? This is a  
24 rehash of what he already testified to. I mean, he already  
25 testified that if this were added to the northern leg, it

1 would be, add three. It would 1592.

2 MS. MEAD: I had a follow-up question to that,  
3 though, that=s related to one of their --

4 EXAMINER: Okay. Then what's your follow-up  
5 question?

6 MS. MEAD: If it was part of the scope and if we  
7 did have a three CLV impact, would this application be able  
8 to do mitigation improvements to address the impact on that  
9 intersection?

10 EXAMINER: Okay. Well, that's another case.  
11 Okay? Do you know the answer?

12 MR. STARKEY: Based on the data that's in the  
13 record --

14 EXAMINER: If you haven't had time to consider it,  
15 don't answer because I'm not even sure it's relevant, quite  
16 frankly because I'm not going to carry out -- I'm required  
17 to make a decision today on what's in front of us based on  
18 the current, you know, the most current traffic accounts.  
19 So, whether you can mitigate it or not to me, it's not  
20 relevant. I will assume that he wouldn't be allowed to  
21 proceed unless it's mitigated but if it fails. So, do you  
22 have anything else?

23 MS. MEAD: Not that's critical.

24 EXAMINER: Okay. Mr. Starkey and Ms. Quinn, thank  
25 you very much for both. Mr. Starkey thank you. Ms. Quinn,



1 thank you and Mr. Leibowitz.

2 MR. LEIBOWITZ: You're welcome.

3 EXAMINER: I think you've earned your pay today,  
4 Ms. Quinn. Mr. Starkey certainly has. All right. I take  
5 it that Mr. Sekerek is your next witness?

6 MS. MEAD: Yes.

7 EXAMINER: Mr. Sekerek, you're still under oath.

8 MR. SEKEREK: I understand.

9 MS. MEAD: Mr. Sekerek, for the hearing examiner's  
10 question about the tree save plan which was raised by Park  
11 and Planning staff. Did your office prepare the tree save  
12 plan? That's Exhibit 15B.

13 MR. SEKEREK: Yes. We did, and it's, like you  
14 said, in the record.

15 MS. MEAD: In the record. And is the applicant  
16 still committed to that tree save plan?

17 MR. SEKEREK: Yes. You recall from my initial  
18 testimony, there are no trees on the site for appropriate  
19 preservation.

20 EXAMINER: Uh-huh.

21 MR. SEKEREK: It's strictly for the protection of  
22 the trees on adjoining property starting at the church.

23 MS. MEAD: So, is the tree save plan impacted by  
24 the revise of the --

25 MR. SEKEREK: No. Again, no trees on site to be

1 preserved under either scenario or any scenario.

2 MS. MEAD: Thank you. Mr. Sekerek, the opposition  
3 has questioned the consistency of this special exception  
4 with the master plan referencing the specific guideline  
5 language on page 26. They note that the master plan  
6 discourages special exceptions in residential areas  
7 immediately adjacent to the commercial district, and that  
8 these areas are particularly vulnerable to encroachment of  
9 nonresidential uses. In your opinion, does this master plan  
10 language discourage the special exception use of this  
11 property?

12 MR. SEKEREK: No. It doesn't. This property has  
13 a clear separation from the commercial, the Four Corners  
14 commercial area. Any of those homes, there's many homes  
15 that intervene between this site and the commercial area,  
16 are all single family homes none of which have special  
17 exceptions or nonresidential uses to them, and you can't  
18 look at that language in isolation, in the context of the  
19 rest of the master plan. This property already had a  
20 nonresidential use on it at the time of the master planning,  
21 and the master plan recommended that it continue in a  
22 nonresidential use in the land use plan, page 27. So, you  
23 know, for this site, there would not be any encroachment of  
24 a commercial area. It has a clear separation. It's  
25 recommended in the master plan for nonresidential and, you

1 know, so this is a site uniquely positioned to provide that  
2 community building block, community service.

3 MS. MEAD: You mentioned that there is no  
4 commercial uses along this block, along University  
5 Boulevard. Would your opinion be different if there were  
6 any commercial uses and structures in these homes along  
7 University Boulevard?

8 MR. SEKEREK: Not of this issue. The property  
9 would, you know, still is recommended for nonresidential use  
10 in the master plan. So, it would not have been an  
11 encroachment and, however, you know, the special exceptions  
12 general requirements do have provisions in there regarding,  
13 you know, saturation of a neighborhood for nonresidential  
14 uses. So, to make sure there's not a proliferation of  
15 special exception uses that would alter the character of the  
16 neighborhood. Again, this one had a nonresidential use on  
17 it. It was recommended for nonresidential use, and the  
18 clear separation, you know, makes this site clearly  
19 consistent with the master plan.

20 MS. MEAD: Did the planning board, in its opinion,  
21 find that this discouragement language, the opposition  
22 reference in the master plan, prohibit this special  
23 exception use on this property?

24 MR. SEKEREK: No. It did not. Both of the  
25 planning board opinions specifically stated that and that

1 includes this property. But, that the daycare center needed  
2 to be designed, scaled, and buffered appropriately and  
3 master plan encouragement of design said residential in  
4 character and scale.

5 MS. MEAD: Thank you. The opposition referenced  
6 the size of the building in its testimony regarding the  
7 master plan language. Is there any language in the master  
8 plan guidelines regarding the recommended size of special  
9 exception buildings?

10 MR. SEKEREK: No. Just that the master plan  
11 guidelines have a very typical recommendation. It should be  
12 residential in character and scale. Did not recommend, you  
13 know, relationship, quantitative relationship to the size  
14 and surrounding homes or other structures. That is, as I  
15 had previously testified, language that is in other master  
16 plans including those contemporary with the Four Corners  
17 master plan where it did specifically say, you know,  
18 relative to the, you know, adjoining homes in the  
19 neighborhood.

20 MS. MEAD: If the master plan doesn't mention size  
21 nor the size of a home in the neighborhood as proposed by  
22 the opposition, how does a special exception -- how do you  
23 judge whether it's residential in character and scale?

24 MR. SEKEREK: The quantitative elements are more  
25 appropriate for the development standards of, you know,

1 setbacks and coverage FAR if it's applicable in that case.  
2 The zoning ordinance for special exceptions does provide  
3 guidance on, you know, achieving residential character and  
4 scale. 59-G-1.23(g) states that large buildings, and again,  
5 a daycare center would be inherently larger than a single  
6 family residence. Large building elevations must be divided  
7 into distinct planes by wall, offsets, architectural  
8 articulation to achieve compatible scale and massing.

9 EXAMINER: Where are you reading from?

10 MR. SEKEREK: 59-G-1.23(g). So, and again, the  
11 recognition that special exception uses are inherently  
12 larger one story. That type of thing. Residential scale  
13 doesn't mean replication or comparative size. There are  
14 design solutions to achieve this. Just like the zoning  
15 ordinance spelled out in its guidance. For example, there  
16 are two recent daycare special exceptions that we had  
17 previously entered into the record, both of which, Goddard  
18 School and Dayhill are the two special exceptions both of  
19 which had substantially larger buildings than what we're  
20 proposing here. They're 20,000 square feet and 9,000 square  
21 feet, I believe. So, not only twice and four times, almost  
22 five times, the size of the proposed building but also much  
23 larger than the surrounding homes around it. Staff found,  
24 for those applications, as they do for this one, that the  
25 buildings had to scale in keeping with those homes and it

1 used the tools of, you know, pitched roofs, building  
2 articulation, varying textures, window design treatments,  
3 residential type entrance, et cetera. A lot of tools in  
4 their tool belt that Ms. Nelson, the architect, used for  
5 establishing a residential character in scale for the  
6 proposed building. So, those daycare centers similarly used  
7 all these same tools that Ms. Nelson is for this daycare  
8 center, and they were able to achieve that for much larger  
9 buildings.

10 MS. MEAD: If numbers aren't required for scale  
11 and the opposition has referenced your memorandum, why did  
12 GNO have a memorandum addressing the size of the neighboring  
13 homes and the previous structure mention at all?

14 MR. SEKEREK: I am adverse to trying to quantify  
15 it but we did need to respond to the specific questions, and  
16 I felt it necessary to correct a lot of the information out  
17 there in order to do that. I mean, there was a lot of data  
18 out there that was just plain obvious in gross error. So,  
19 we provided that just, you know, a more accurate measure and  
20 it was helpful to point out that the proposed building, you  
21 know, in this context, similar size as the previous building  
22 on this very site. That, and it was also, you know, very  
23 similar size, even less, than just one of the proposed homes  
24 on the previously approved subdivision application that the  
25 neighborhood has testified that they've supported. But,

1 again, not a mathematical scale.

2 EXAMINER: Well, it's in size somewhat. I mean,  
3 it's not totally irrelevant. Size isn't totally irrelevant.  
4 Are you saying --

5 MR. SEKEREK: Well, character and scale is what  
6 our criteria is and, you know, to a degree, yes. Size.  
7 But, there are design solutions to --

8 EXAMINER: Mitigate.

9 MR. SEKEREK: -- accommodate the inherently larger  
10 size. You know, that said, it's difficult to say that they,  
11 you know, a proposed building that's the same size as one of  
12 the, just one of the five residences that was approved on  
13 this to say that it is not a residential character in scale  
14 or even size. That would be quite a stretch.

15 EXAMINER: So, you're testifying that you don't  
16 use purely a size analysis. Is that what you're saying?

17 MR. SEKEREK: Absolutely not.

18 EXAMINER: Okay.

19 MR. SEKEREK: In the design professionals, you  
20 know, there's visual impact analysis. Just to quantify it  
21 like that would be equivalency of, I don't know, paint by  
22 numbers to an artist.

23 EXAMINER: Uh-huh.

24 MR. SEKEREK: It's just there's so much more  
25 involved in how you assess character and compatibility.

1 MS. MEAD: And the opposition had used an average  
2 of the size of the homes in the defining neighborhood, using  
3 purportedly a number from the December staff report for that  
4 average. How did you look at the size of homes in the area  
5 to address this size issue if it was?

6 MR. SEKEREK: Well, we looked at all the homes  
7 certainly in the immediate area. The more immediate, the  
8 more applicable it is. Homes and structures. Again, I  
9 understand the concern, the interest is greater, you know,  
10 for the single family homes but we can't ignore the context  
11 of this being right across the street from a place of  
12 worship. So, you know, we've got the place of worship.  
13 We've got directly confronting homes across University  
14 Boulevard that are, you know, the same size, adjoining homes  
15 that are, you know, similar in size, and homes like, you  
16 know, 413 is a very small home on a very small lot and that  
17 also enters into the context but we've got to consider all  
18 of the homes and structures around it.

19 MS. MEAD: The opposition testified that the homes  
20 on University Boulevard adjoining, confronting the property  
21 shouldn't be considered homes of the neighborhood since  
22 University Boulevard is a major highway. Do you agree?

23 MR. SEKEREK: Certainly not. The University  
24 Boulevard context is one of the, you know, major reasons why  
25 this site is so appropriate for special exception use. It



1 is similar to the Ueshiba School and daycare component. It  
2 was much more significant than what we're proposing. The  
3 neighborhood, you know, for this property, as you can see on  
4 4F, this is how I had defined the neighborhood on the  
5 initial application, and I have no reason to deviate from  
6 that. The staff had even proposed a bit larger neighborhood  
7 significantly to the north side, on the other side of  
8 University Boulevard. So, they not only included all these  
9 homes with a direct visual relationship to the subject  
10 property, they even went a street further, deeper, into that  
11 other neighborhood. I don't necessarily agree that it  
12 should go that deep but I certainly would insist that those  
13 homes along University Boulevard, directly confronting this  
14 site, are within the neighborhood. They have that direct  
15 visual relationship, social relationship, to this property.  
16 If, say, University Boulevard was out at the periphery, that  
17 might be an appropriate demarcation for ending the  
18 neighborhood. But, not when both of these properties have  
19 direct visual and social relationship to each other. Say at  
20 least, you know, this is a beltway with sound walls and no  
21 visual relationship. I'm not saying necessarily those homes  
22 would be confronting but certainly, you know, we've gone  
23 over the character of University Boulevard. These homes  
24 face the road, address the road, and relate to each other.

25 MS. MEAD: Did the planning staff find that the

1 revised building layout and the reduced building and its  
2 architecture satisfy the master plan guidelines for  
3 residential character and scale?

4 MR. SEKEREK: Yes. The staff's confirmed that the  
5 reduced building, especially the new design and layout, made  
6 possible by the Route 20 and then 30, you know, two percent  
7 reduction now meets the master plan recommendation for  
8 residential size and scale. I'll read from the staff  
9 reports.

10 EXAMINER: Well, you know what?

11 MR. SEKEREK: Or not.

12 EXAMINER: Or not. I know I have read and reread  
13 that staff report.

14 MR. SEKEREK: Okay. Very good. Yes. We have.  
15 Specific statements on page 7 and 8, and I won't reread  
16 those.

17 MS. MEAD: The opposition submitted Exhibit 139,  
18 the brochure for the estates at Four Corners, live at the  
19 corner of custom and convenient, the five home subdivision  
20 that was previously approved for the property. Do you  
21 consider those homes to be residential in character and  
22 scale?

23 MR. SEKEREK: Yes. They have residential features  
24 of, you know, pitched roofs, architectural features, front  
25 doors, et cetera, those elements that we discussed earlier

1 that Ms. Nelson incorporated into the design of the daycare  
2 center.

3 EXAMINER: Is that the flyer? I couldn't see what  
4 he was --

5 MS. MEAD: Yes. 139.

6 EXAMINER: Okay.

7 MR. LEIBOWITZ: It's actually no.

8 MS. MEAD: Yeah.

9 EXAMINER: Okay. No peanut gallery either. But,  
10 it's okay. It was the marketing thing.

11 MS. MEAD: Right. Right. 139 is the exhibit  
12 number. Those five homes that the neighbors testified  
13 they'd support, are they in the same scale as the daycare  
14 center in the context of the surrounding homes?

15 MR. SEKEREK: In terms of scale, actually, the  
16 homes are a larger scale than the daycare center considering  
17 the homes are on much smaller lots. This same such a  
18 property was subdivided into five homes. Smaller lots and  
19 with a full two story height and, you know, additional  
20 massing along Gilmore and University Boulevard. The  
21 daycare center is in the context of a very large lot and you  
22 can't ignore that. The revised layout as the neighbors had  
23 appropriately suggested, we placed the narrow side of the  
24 proposed building along Gilmore so that it helps that  
25 cadence of, you know, continues that cadence of the homes

1 along Gilmore. It is a bit wider than the home directly  
2 adjacent to it but then it's narrower than the single family  
3 home right across the street along Gilmore. So, when it  
4 comes to addressing the street, it's very much compatible in  
5 character and it's located on a much, much larger lot.

6 MS. MEAD: And do you have an updated exhibit  
7 showing the context on Gilmore Drive? Not a study.

8 MR. SEKEREK: Do you recall the previous  
9 architecture? We had Exhibit 61H.

10 EXAMINER: Uh-huh.

11 MR. SEKEREK: We've done very similar treatment  
12 for the proposed --

13 EXAMINER: Okay. And we're on --

14 MS. MEAD: We'd like to --

15 EXAMINER: 175.

16 MS. MEAD: 175.

17 EXAMINER: And can you describe what that is?

18 MR. LEIBOWITZ: It should be at least 176, I  
19 think.

20 MS. MEAD: No. The BRT studies aren't in.

21 MR. LEIBOWITZ: Oh. I see the number wasn't used.

22 MS. MEAD: Oh.

23 EXAMINER: Right.

24 MS. MEAD: Yeah. I guess we don't need to.

25 MR. LEIBOWITZ: Okay.

1 EXAMINER: Yeah. I see what you're saying. But  
2 I'm going to just do it 175 and -- I had a case where, well,  
3 I won't go into it. I won't go into it but just for  
4 administration reasons, I'm going to use 175 if that's okay?

5 MR. LEIBOWITZ: Okay.

6 EXAMINER: Oh. Wait. What is it?

7 MR. SEKEREK: It is titled elevation exhibit and  
8 it's very similar to the Exhibit 61H. However, this one is  
9 dated January 2012.

10 EXAMINER: Okay. Elevation exhibit, January 2012.  
11 Okay.

12 MR. SEKEREK: So, it includes both a photo montage  
13 along Gilmoure Drive --

14 EXAMINER: Right.

15 MR. SEKEREK: -- just as we had done before and  
16 the same elevation extent before but with a revised  
17 architecture, and --

18 EXAMINER: Okay. Well, why don't you put both on  
19 the easel so everyone can -- Mr. Leibowitz, do you have an  
20 objection to this one?

21 MR. LEIBOWITZ: I don't have an objection. Just I  
22 would like a moment to look at them.

23 MR. SEKEREK: I'm sorry. You've just --

24 MR. LEIBOWITZ: I would like a moment to look at  
25 them.

1 MR. SEKEREK: Oh. Sure. Yeah. I understand.  
2 It's a bit difficult to appreciate from a distance.

3 MS. MEAD: Do you want to come up?

4 MR. LEIBOWITZ: And I do like to appreciate good  
5 art.

6 MR. SEKEREK: Yeah.

7 MR. LEIBOWITZ: Ask me why.

8 EXAMINER: And it's the landscaping shown on those  
9 two exhibits. Is that what your landscape plan --

10 MR. SEKEREK: Yes. Those --

11 EXAMINER: -- when fully grown out is --

12 MR. SEKEREK: The location of those trees are  
13 exactly as, you know, the line of sight would intersect  
14 along there from the submitted landscape plan. The notes do  
15 indicate the tree types and crowns shall represent  
16 approximately 10 year growth characteristics relative to  
17 size at installation, the species, and typical growth rate  
18 for that species.

19 EXAMINER: Okay.

20 MR. SEKEREK: So, we know that installation is not  
21 10 years or 20 years, it's in that sweet spot of 20 years.

22 MR. LEIBOWITZ: Thank you.

23 MR. SEKEREK: The comparisons of those side by  
24 side relatively adjoining two story home, you can see how  
25 the scale and massing has shrunk considerably as it's

1 appreciated from Gilmoure Drive and the residential  
2 articulation that's on there with a very articulated roof,  
3 facades, and front porch treatment, et cetera. So, it tells  
4 me the compatibility with the adjoining residences is, even  
5 with as small as that adjoining residence is, compatibility  
6 is apparent.

7 MS. MEAD: Regarding that adjoining property, the  
8 opposition testimony was that the daycare building was five  
9 to six times the size of that home. Do you agree that the  
10 daycare building is five to six times the size of that  
11 adjoining house?

12 MR. SEKEREK: No. Because the site plan is in  
13 plan view, and we create these things in plan view, that's  
14 not how it's experienced or appreciated or how scale and  
15 compatibility and character would be evaluated. The 800  
16 plus or minus square foot footprint of that house does not  
17 equal building size. It's a two story house. So, from a  
18 pure, that said, from a pure area standpoint, the daycare  
19 center building is about three and half times the size of  
20 that one particular house. But, again, daycare is  
21 inherently a one story building and -- which is similar in  
22 character to many of the one story homes in this  
23 neighborhood. It's a diverse group of homes. There's,  
24 again, Ms. Nelson used architectural elements but there are  
25 a combination of one and two story and walk out and et

1 cetera homes in this immediate neighborhood.

2 MS. MEAD: You mentioned that it was from a pure  
3 area standpoint, three and a half times. What do you mean  
4 by area?

5 MR. SEKEREK: Well, yeah. Again, to assess  
6 character and scale, we have to put it into context of the  
7 homes and structures, in context of the site. The subject  
8 property, the lot, is seven times the size of the house on  
9 413 Gilmore, the lot.

10 MS. MEAD: Seven times the size of the house or  
11 the lot?

12 MR. SEKEREK: The lot. The subject property lot  
13 is seven times the size of the lot 9, 413 Gilmore lot. So,  
14 when it comes to FAR, you know, the building is  
15 proportionately much smaller. It's, you know, significant  
16 to bring out. We've got a one story building that has less  
17 coverage than the two story adjoining house and, you know,  
18 significantly less FAR if, you know, I just find that --

19 EXAMINER: You mean FAR in comparison to lot size.

20 MR. SEKEREK: FAR is the --

21 EXAMINER: Yeah. The --

22 MR. SEKEREK: -- ratio of floor area to the lot.  
23 Yeah. I think those -- and we're talking significant  
24 differences here, and I think that's significant  
25 considering, especially coverage, considering we've got a



1 one story proposed use here in comparing it to two story  
2 homes, and so, it's not only a, you know, a fraction of the  
3 maximum allowed coverage. Thirty-five percent max coverage  
4 is allowed, and we're at 12 percent but we even compare  
5 favorably to the adjoining residences.

6 MS. MEAD: Thank you. If we were looking at the  
7 size of surrounding homes, are there other homes adjoining  
8 or confronting the property that are larger than the 413  
9 Gilmore lot 9 that you just referenced?

10 MR. SEKEREK: Oh. Yes. That's an example of a  
11 very small home for the area. 214. Back to the  
12 illustrative drawing in the door. The illustrative which is  
13 Exhibit 99C or Exhibit 4F which identifies lot numbers on  
14 there. The adjoining house on, get the numbers right, 214  
15 University Boulevard.

16 EXAMINER: Is that Mr. Richardson's property or --  
17 no.

18 MS. QUINN: No.

19 MR. LEIBOWITZ: No. Mr. Richardson is three  
20 houses down on Gilmore.

21 EXAMINER: Okay.

22 MR. SEKEREK: So, directly adjacent --

23 EXAMINER: What's the size of 214? Is it 2300?

24 MR. SEKEREK: It's a larger lot of 10,257 square  
25 feet. It's footprint is about 2200 square feet. GFA is a

1 little squirrely because it's --

2 EXAMINER: Yeah.

3 MR. SEKEREK: -- got a walkout condition. So, I  
4 don't know if it qualifies as a basement or a cellar and all  
5 the idiosyncracies of that.

6 EXAMINER: Well, double the footprint. What would  
7 double the footprint be?

8 MR. SEKEREK: 214 University Boulevard?

9 EXAMINER: Yeah.

10 MR. SEKEREK: 4400 square feet.

11 EXAMINER: Okay.

12 MR. SEKEREK: Just the footprint.

13 EXAMINER: But, is it one story or two stories?

14 MR. SEKEREK: It's somewhere in between there.

15 EXAMINER: Okay.

16 MR. SEKEREK: It's one story at one end. Two  
17 stories at the other end. I don't know if the lower level  
18 qualifies as a basement or a cellar, and it would be  
19 included in the floor area.

20 EXAMINER: Okay.

21 MR. SEKEREK: But, mind you, just the coverage,  
22 though, for that lot and it's a larger lot in the  
23 neighborhood is 22 percent of the lot. So, again, in  
24 context it's larger in that type of scale regardless, you  
25 know, if you want to define it as one or two stories. Of

1 course, the home across 219 University Boulevard on lot 17,  
2 9,415 square foot lot. It has --

3 EXAMINER: Can you point that one out?

4 MR. SEKEREK: Yes.

5 EXAMINER: On exhibit --

6 MR. SEKEREK: It's the one with the two structures  
7 on it.

8 EXAMINER: Oh. 219. Oh. Okay.

9 MR. SEKEREK: Yes. The story of 219.

10 EXAMINER: Yes.

11 MR. SEKEREK: It's directly across the street.

12 Similarly, it, you know, from the street, you see the narrow  
13 side similar to what we would accomplish with the subject  
14 property on Gilmore. It's two stories and there's a lot of  
15 structure behind there. So, all told --

16 EXAMINER: Yeah. Have you read Exhibit 159?

17 MR. SEKEREK: I have.

18 EXAMINER: And you still think that's comparable?

19 MR. SEKEREK: I think the discussions in there  
20 regarding its use.

21 EXAMINER: Do you think it's a legal lot if the  
22 larger structure is in the rear yard?

23 MR. SEKEREK: I'm sorry. I didn't hear --

24 EXAMINER: Do you think that those --

25 MR. SEKEREK: I did not read the entire thing.

1 The part I read was the discussion of its use and previous  
2 use and it's no longer being used for the restaurant uses.

3 EXAMINER: Okay. Well, let me just say about 219.  
4 You can put on whatever you want but it does seem to me, I  
5 think the evidence adds up, that the large structure was  
6 built illegally to accommodate an illegal use and that's why  
7 the SDAT records are there, are wrong. Because that would  
8 be my guess.

9 MR. SEKEREK: Okay. But, in context of the  
10 neighborhood, it is an existing structure just like any of  
11 the others. It's one aspect of it.

12 EXAMINER: Fair enough.

13 MR. SEKEREK: Get into it's, I agree.

14 MS. MEAD: It is warm in here.

15 EXAMINER: I'm sorry. I just realized I was doing  
16 that. Okay. Go ahead.

17 MS. MEAD: I know. It is warm in here. I think  
18 we all agree.

19 MR. SEKEREK: We're up to 77 degrees in here.

20 EXAMINER: Yeah. Can you hold for two minutes,  
21 and I'm going to, I really am just running back there and  
22 asking them to turn it down.

23 MS. MEAD: Thank you.

24 MR. SEKEREK: I'd be happy to send Mr. Starkey.

25 EXAMINER: Please just tell them I sent you, and

1 you're not --

2 MR. SEKEREK: Yeah.

3 EXAMINER: Okay. Go ahead.

4 MS. MEAD: Mr. Sekerek, talking about 219  
5 University Boulevard, if we disregard one of the, if we only  
6 consider one of the structures on that property --

7 EXAMINER: There you go.

8 MS. MEAD: Would the subject building on -- the  
9 daycare building, would that be twice the size of one of  
10 those structures?

11 MR. SEKEREK: Yes. Yes.

12 MS. MEAD: Thank you. So, even if there wasn't  
13 two structures on 219 University Boulevard, this daycare  
14 structure is twice the size of one of them?

15 MR. SEKEREK: Yes. I agree.

16 MS. MEAD: And, in your opinion, is 219 University  
17 Boulevard relevant because it's part of the neighborhood?

18 MR. SEKEREK: Absolutely. Directly across the  
19 street and University Boulevard doesn't separate it from  
20 being in the neighborhood. It's the unifying element. Both  
21 properties address the street and directly across from each  
22 other.

23 MS. MEAD: All right. And backing away from size,  
24 sticking to the point about scale. Is the proposed daycare  
25 structure of a similar scale to those homes?

1           MR. SEKEREK: Yes. Again, we are lower in terms  
2 of coverage and FAR in context with the site. Absolutely.  
3 It's very residential in scale and less in character and  
4 scale and it's less intense in terms of scale relative to  
5 its line.

6           MS. MEAD: Thank you. You've already confirmed  
7 it's in the neighborhood. The opposition testified that the  
8 revised building was not in scale with the Gilmore Drive  
9 homes. Do you agree with that position?

10          MR. SEKEREK: No. Again, it is similar in all the  
11 things I've been discussing regarding in the context of the  
12 lot and how it's designed and the treatments. It's  
13 certainly residential in character and scale.

14          MS. MEAD: Specifically for Gilmore Drive, is the  
15 frontage of the daycare building on Gilmore similar to the  
16 frontage of the other homes on Gilmore Drive?

17          MR. SEKEREK: Yes. It's similar. It's set back  
18 in a similar sense. It's similar, you know, it's a one  
19 story structure. It's similar in width. It's wider than  
20 some, narrower than others.

21          MS. MEAD: Do you know, are there any other  
22 buildings on Gilmore Drive that are larger than the subject  
23 building?

24          MR. SEKEREK: Certainly the place of worship.  
25 Categorically, the place of worship which is larger than the

1 subject lot. It's two stories. It's not architecturally,  
2 I'm sorry, residentially designed. It has a much larger  
3 parking facility.

4 MS. MEAD: Would you agree with the opposition's  
5 statement in their testimony that the daycare building looks  
6 like a big house?

7 MR. SEKEREK: Well, the house characterization  
8 confirms that we've captured and achieved the residential  
9 character that we were all trying to achieve. So, we  
10 appreciate those statements. So, but although it's bigger  
11 in size then, you know, say the one adjacent house, again,  
12 we've gone to great lengths to design solutions in addition  
13 to its context and size of lot, gone to great lengths for  
14 the design solutions to address the residential character.  
15 So, and again, look at the building elevations both Jane's,  
16 Ms. Nelson's, and the more recent exhibit. It's, you know,  
17 roughly twice the size of the footprint of the house on 214  
18 University. It's into the previous dentist office on --

19 EXAMINER: 214 is the one adjacent to the east?

20 MR. SEKEREK: 214 is the one, oh, yeah. I=m  
21 sorry. Yes. Adjacent to the east. Exactly. Similar to  
22 219 buildings or twice one of the buildings, to the previous  
23 dentist office, similar to the homes that were previously  
24 approved for this site, and it's smaller than the place of  
25 worship.

1 MS. MEAD: Thank you. Back to the master plans.  
2 That's the issue. The opposition referred to pages 33 and  
3 34 of the master plan which have the charts with existing  
4 commercial zoning and the commercial zoning plan, and they  
5 noted that this property is not identified. Does that mean  
6 the master plan doesn't support a nonresidential use on this  
7 property?

8 MR. SEKEREK: Those pages were for the commercial  
9 zoning, and this property is residentially zoned or we  
10 wouldn't be here. It is residentially zoned and proposed to  
11 remain residentially zoned, and the zone allows a daycare as  
12 a special exception use in this residential zone. The  
13 relevant plan for this special exception is a land use plan,  
14 land use plan on page 21, which recommends this property for  
15 a nonresidential use. So, it does support nonresidential  
16 use in the master plan. It does support nonresidential use  
17 on this property.

18 MS. MEAD: Thank you. The opposition suggested  
19 that the office recommendation on that land use plan in the  
20 master plan was only so that the dentist practice could  
21 continue to operate on the property not that the master plan  
22 supported that use, a nonresidential use, for the future of  
23 the property. Do you agree?

24 MR. SEKEREK: No. The existing dentist office use  
25 at that time could have continued if the land use plan had



1 showed it as residential as a pre-existing use, and if the  
2 district council wanted to limit it to just, you know, the  
3 continued use for that one particular dentist office and  
4 then to revert to residential use, it would have shown it as  
5 a residential land use on the land use plan. Similar to the  
6 Safeway parking area as another example. The land use plan  
7 is for the life of the master plan. You know, 20 some plus  
8 years, and it's not an existing land use map. It's the land  
9 use plan and the land use plan would have designated it for  
10 residential use if the master plan wanted it to revert to  
11 residential. As I, you know, originally testified, you  
12 know, the land use recommendation in the master plan and the  
13 sites location along University Boulevard is why this site  
14 is so appropriate for a special exception particularly this  
15 daycare use. You know, and as a planner, those are two of  
16 the significant of the many reasons that I felt this was  
17 consistent with the master plan and appropriate.

18 MS. MEAD: Thank you. If you could refer to the  
19 revised special exception site plan. I just had a parking  
20 question for you.

21 MR. SEKEREK: 96A?

22 MS. MEAD: Yes. I believe that's it. It's the  
23 parking on the proposed and the revised special exception.  
24 Is it to the code requirements for parking for this use  
25 based on the enrollment and the staffing?

1 MR. SEKEREK: Yes. It does.

2 MS. MEAD: So, the previous request for parking  
3 waiver has been deleted?

4 MR. SEKEREK: It does not apply to this  
5 application. No. Mind you, I supported the waiver  
6 previously, and there's a lot of reason for that. National  
7 providers of daycare, their prototypes and such, you know,  
8 they have their criteria for proposed sites, and it's within  
9 their interest to make sure that there's sufficient parking  
10 there. Those prototypes would require about 30 spaces for  
11 daycare centers that --

12 MR. LEIBOWITZ: I'm going to object to this  
13 discussion regarding national prototypes.

14 EXAMINER: Why? Basis?

15 MR. LEIBOWITZ: Again, we don't have these reports  
16 for me to question him.

17 EXAMINER: Well, what we generally do is allow  
18 them to testify but we don't allow the report to be in the  
19 record.

20 MS. MEAD: We're not spinning anything.

21 EXAMINER: And I'm not sure it helps you because  
22 your parking lot is smaller than the prototype. Yes?

23 MR. SEKEREK: But, the prototypes are twice the  
24 size of this daycare center.

25 EXAMINER: Oh. For 30 spaces?

1 MR. SEKEREK: Yes. I see.

2 MS. MEAD: What size daycare facility is the --

3 MR. SEKEREK: 8,000, 9,000, 10,000 square feet is  
4 what your prototype daycare centers that you would, you  
5 know, probably envision as you discuss these national  
6 spreadsheets. Done site design for a number of daycare  
7 centers. So, familiar with their, you know, prototype  
8 buildings and the type of parking that they're looking for.  
9 So, and again, it's within their interest to have sufficient  
10 parking. Twenty-eight spaces for a 4,000 square, 4,400  
11 square foot daycare center would, you know -- and also  
12 General Services Administration has their own standards.  
13 We've daycare centers in a governmental context also. For  
14 a, based on their ratios, this site would require 19 parking  
15 spaces, and also recent special exceptions right here in  
16 this county. The Goddard School special exception which was  
17 -- the hearing examiner report was admitted as Exhibit 79F.  
18 That, again, it very, well, much larger daycare center than  
19 this, would typically have required 89 parking spaces, and  
20 they got a waiver for roughly a third of that down to 60  
21 spaces including a couple of motorcycle spaces.

22 EXAMINER: But, do you know if that, you know, how  
23 that parking has worked out?

24 MR. SEKEREK: It is not built yet.

25 EXAMINER: Yes. Okay.

1 MR. SEKEREK: It's not built yet.

2 EXAMINER: All right.

3 MR. SEKEREK: But, the hearing examiner supported  
4 that, and I'll read from the hearing examiner report on page  
5 29, 79F. I will read it quickly. Technical staff agreed  
6 with petitioner that a parking waiver is justified since  
7 approximately 30 percent of the clientele pick up and drop  
8 off more than one child per visit, and there are staggered  
9 drop off and pick up times throughout the day, and that's  
10 for this daycare center, and that, if you understand the  
11 context of that center, it does not enjoy anywhere near the  
12 walkability or the access to public transportation as this  
13 one does.

14 EXAMINER: Although the planning board here, in  
15 our case, recommended against the waiver.

16 MR. SEKEREK: Yes.

17 EXAMINER: And why did they recommend against the  
18 waiver?

19 MS. MEAD: For the instant case?

20 MR. SEKEREK: Would you like me to speculate?

21 EXAMINER: Yes. Well --

22 MR. SEKEREK: It was not supported by the  
23 community and I don't know, I don't know why. That was kind  
24 of a guess.

25 EXAMINER: I'm just trying -- you're citing the

1 Goddard School and yet I have a different recommendation  
2 here. So, I'm just wondering why I should use the Goddard  
3 School as a precedent when I have a different recommendation  
4 from the planning board here?

5 MS. MEAD: The recommendation wasn't based on this  
6 proposal.

7 EXAMINER: Not this plan. No. It didn't go back  
8 to the planning board. But --

9 MR. SEKEREK: Well, I said yes. It's mute in that  
10 we're not asking for a waiver but I am confident that users  
11 will not only be able to find a parking space, they'll have  
12 their choice of spaces when they enter the site based on  
13 industry standards.

14 EXAMINER: Okay.

15 MR. SEKEREK: We meet minimum regulations of  
16 Montgomery County and we exceed any of the industry  
17 standards that I'm familiar with.

18 EXAMINER: Okay.

19 MS. MEAD: And, Mr. Sekerek, have you worked on  
20 any special exceptions that have the TMPs?

21 MR. SEKEREK: Not special, well, let's see. A  
22 school in the distant past.

23 EXAMINER: A private.

24 MR. SEKEREK: Yes. A private school. It's been --

25 EXAMINER: Eleemosynary Institution, as they used

1 to call them

2 MR. SEKEREK: Wow. Yeah. It took me years to --

3 MS. MEAD: Learn how to pronounce it.

4 EXAMINER: Learn it and then they stopped using  
5 it.

6 MR. SEKEREK: Exactly. But certainly familiar  
7 with many of the TMPs for daycare centers. Now, the Goddard  
8 School being one. Dayhill. Just to cite those that are  
9 already in the record. Both of those did include TMPs.

10 MS. MEAD: Thank you. I've got no further  
11 questions for Mr. Sekerek.

12 EXAMINER: Okay. Mr. Leibowitz.

13 MR. LEIBOWITZ: Ms. Quinn wanted to go first with  
14 some briefer questions, and then I'll follow.

15 EXAMINER: Okay.

16 MR. SEKEREK: Traffic?

17 MS. QUINN: No more studies.

18 MR. SEKEREK: Okay.

19 MS. QUINN: Mr. Sekerek, you testified that this  
20 property is not considered adjacent to the commercial area.  
21 Is that correct?

22 MR. SEKEREK: Correct.

23 MS. QUINN: Okay. And you are aware that the  
24 vision division, formerly known as the community based  
25 planning division of the planning department is responsible

1 for determining, making a recommendation as to whether a  
2 plan is consistent with a master plan. Is that correct?

3 MR. SEKEREK: They do contribute to the staff  
4 reports. Correct.

5 MS. QUINN: And do you recall Mr. Craig White's  
6 memo from the staff report which is Exhibit 47, page 19?

7 MR. SEKEREK: For the initial application, yes.

8 MS. QUINN: And Mr. Boyd was a member of the  
9 original planning committee in the 1996 master plan. Is  
10 that correct?

11 MR. SEKEREK: I don't have specific knowledge of  
12 that.

13 MS. QUINN: There was testimony in this case --

14 EXAMINER: Okay. But, he answered your question.  
15 He doesn't know.

16 MS. QUINN: Okay. Do you have that memo  
17 available?

18 MR. SEKEREK: The individual staff report? I  
19 think it was an attachment to the staff report.

20 MS. QUINN: Yes. Exhibit 47. December 6th.

21 MR. SEKEREK: Yes. What page?

22 MS. QUINN: Page 19.

23 MR. SEKEREK: Yes. Attachment 1.

24 MS. QUINN: And in the first paragraph, would you  
25 agree that it says the division recommends that the planning

1 board reiterate the Four Corners master plans guideline  
2 discouraging special exception uses at this location and  
3 consider recommending denial of the petition?

4 MR. SEKEREK: Yes. I agree that's what the staff  
5 report at that point said.

6 MS. QUINN: And then on the second page at the  
7 bottom --

8 MR. SEKEREK: Page 20?

9 MS. QUINN: Yes. Page 20. The last paragraph  
10 which states -- do you agree that it says evaluating this  
11 petition in light of the three guidelines compels planning  
12 staff to note that the property is located in an area  
13 considered by the plan to be adjacent to the commercial  
14 district?

15 MR. SEKEREK: Yes. I agree that's what this says.

16 MS. QUINN: And you were present for the testimony  
17 of Mr. Jim Zepp --

18 MR. SEKEREK: Yes.

19 MS. QUINN: -- in December who was on the master  
20 plan committee as well as Mr. Mike Fetsch who was the vice  
21 chair of the committee?

22 MR. SEKEREK: I was present at all the hearings.

23 MS. QUINN: Okay. And so, you were here for the  
24 testimony that those two members of the committee that  
25 stated that that was considered adjacent to the commercial



1 district?

2 MR. SEKEREK: I was here during that testimony.

3 Yes.

4 MS. QUINN: You stated just now in your testimony  
5 that the use that was -- the use prior to the purchase of  
6 this property was a nonresidential use. Is that correct?

7 MR. SEKEREK: Yes. It was residential and  
8 nonresidential.

9 MS. QUINN: Now, you are --

10 MR. SEKEREK: I don't have specific knowledge but  
11 I understand from other testimony that the dentist also  
12 lived there.

13 MS. QUINN: That he lived there and practiced  
14 dentistry there?

15 MR. SEKEREK: Yes.

16 MS. QUINN: And are you familiar with the section  
17 of the zoning ordinance for home health practitioner's  
18 office? Section 59-A-2.1 if you'd like to refer to it.

19 MR. SEKEREK: I'm aware of it. I do not have a  
20 recent need to be familiar with the details.

21 MS. QUINN: I understand.

22 MR. SEKEREK: Okay.

23 MS. QUINN: Based on what you know, and if you  
24 aren't sure, I would ask that you refer to this document  
25 that has the section in it, would you agree that Dr.

1 Strahan's use would be considered under today's standards a  
2 home health practitioner's office?

3 MR. SEKEREK: Oh. I don't know nearly enough  
4 about the practice. If there were other practitioners.  
5 It's --

6 MS. QUINN: Okay. Let me ask it this way.

7 MS. MEAD: I'm going to ask the relevance of the  
8 questions on the previous use.

9 MS. QUINN: He just stated that it was a  
10 nonresidential use, and I'm going to go through the history  
11 of the use of that property.

12 MS. MEAD: Well, I don't know, again, if it's  
13 relevant.

14 EXAMINER: Well --

15 MR. LEIBOWITZ: He testified at least five times  
16 that it was nonresidential.

17 MS. QUINN: Nonresidential.

18 EXAMINER: Just a minute. You did bring it up as  
19 to what the use of the property is. If he, okay. At this  
20 stage, you can keep going.

21 MS. QUINN: Thank you. You were hear for the  
22 testimony of one of the patients of Dr. Strahan who  
23 testified that he lived in the house and practiced, he was  
24 the solo practitioner with Betty the nurse on his staff.

25 MR. SEKEREK: I was hear during the testimony. I

1 don't have a specific recollection of his description of  
2 staff. But --

3 MS. QUINN: Okay. If you were to review that  
4 testimony and agree that that's what was said, would you  
5 agree then that this would be a home health practitioner's  
6 office under the definition in section 59-A-2.1?

7 MR. SEKEREK: I would also have to review its  
8 referred sections 59-A-3.4, 59-A-6.1(a), 59-A-6.1(d), and  
9 59-G-2.29 too before I was able to make a conclusion on that  
10 one way or the other.

11 MS. QUINN: So, you would agree then that if he  
12 met all of those conditions, it would no be considered a  
13 nonresidential use of the property? Under the current  
14 zoning ordinance, and I would just qualify that by saying  
15 that at the time, well, just let me start there.

16 EXAMINER: Wait. What conditions are you talking  
17 about?

18 MS. QUINN: Well, a home health under today's  
19 zoning standards --

20 EXAMINER: No. No. No. Are you talking about  
21 the other code sections? If he complied with the other code  
22 sections?

23 MS. QUINN: Well, there are conditions listed in  
24 here that I just that --

25 EXAMINER: In the zoning ordinance?

1 MS. QUINN: Yes. That say what a home health  
2 practitioner's office is, and I'd be happy to read them.

3 EXAMINER: No. No. That's not what I'm asking.

4 MS. QUINN: Okay.

5 EXAMINER: Where does it say in that zoning  
6 ordinance that it's a residential use?

7 MS. QUINN: Well, it says the office of a home  
8 health practitioner who resides in the dwelling unit in  
9 which the office is located is a home health practitioner's  
10 office. For this purpose, a health practitioner's a person  
11 who's licensed or certified by the board under the Maryland  
12 Department of Health and Mental Hygiene and has an advanced  
13 degree in the field for whom an accredited educational  
14 institution but not including an electrolysis, a mortician,  
15 a nursing home administrator, a pharmacist, or a veterinary.  
16 A registered nurse or physician's assistant is a health  
17 practitioner only if that person has an advanced degree in  
18 the field and practices independently. The home health  
19 practitioner's office that does not qualify for registration  
20 under sections 59-A-3.4 and 59-A-6.1 may obtain a special  
21 exception as a major home occupation.

22 EXAMINER: So, okay. So, are you asking Mr.  
23 Sekerek, I'm sorry. Mr. Sekerek. I went through the  
24 transcript. All of the transcript mispronouncing your name  
25 and now that's the way it's in my head.

1 MR. SEKEREK: No worries.

2 EXAMINER: Are you asking him whether this would  
3 be a minor, would be a registration issue or a special  
4 exception issue? Is that what --

5 MS. QUINN: Well, under the guidelines as  
6 described by the witnesses how Dr. Strahan operated, he met  
7 the guidelines for a home health practitioner although at  
8 the time, he was not required to have a permit or a  
9 registration. But, if he were today to establish the same  
10 use that he had back then, he would be required to register  
11 and obtain a permit, he would not be required to get a  
12 special exception.

13 EXAMINER: Okay.

14 MS. QUINN: So, I'm just establishing -- Mr.  
15 Sekerek has consistently said that this was shown in the  
16 master plan as a nonresidential use and recommended for a  
17 nonresidential use, and I'm about to ask --

18 EXAMINER: Okay. I understand where --

19 MS. QUINN: -- some further questions that show --

20 EXAMINER: I just didn't understand where you were  
21 going. Now I do

22 MS. QUINN: Okay.

23 EXAMINER: Mr. Sekerek would it --

24 MR. SEKEREK: So, you'll have to help me then.

25 EXAMINER: Based on the testimony you heard about

1 the use that did exist, would you consider it to be a home  
2 healthcare practitioner under the statute she's showing you?  
3 Is that your question?

4 MS. QUINN: Yes.

5 MR. SEKEREK: I am not able to make any --

6 EXAMINER: If you can't answer --

7 MR. SEKEREK: Yeah. The definition includes  
8 references to other sections I don't --

9 MS. QUINN: Everything --

10 MR. SEKEREK: As far as whether or not it would  
11 qualify for that, I'm not prepared to answer.

12 MS. QUINN: Well, I've included all the relevant  
13 sections from the code in this packet.

14 EXAMINER: Well, your asking him --

15 MS. MEAD: I think we can make a proffer to move  
16 this along as far as agreeing. I can ask Mr. Sekerek if he  
17 would agree that it used to be a home with a dentist office  
18 in it, and we can use that term instead of nonresidential  
19 use. If that will speed up this discussion?

20 EXAMINER: Okay. Does that satisfy you?

21 MR. SEKEREK: I certainly didn't mean to ignore  
22 that the previous office use also included a residence.

23 EXAMINER: Well, when it said office and then the  
24 master plan said office.

25 MS. MEAD: Well, I have separate questions for,

1    yeah.

2                   EXAMINER:   Okay.   Go ahead.

3                   MS. QUINN:   Can I keep going on that and perhaps  
4   come back to this to show why this is relevant after I  
5   finish the other questions.   Okay.   So, in the 1996 plan,  
6   you referred to page 21.   That says that you've indicated it  
7   says that it's recommended for office use.   Is that correct?

8                   MR. SEKEREK:   That's correct.

9                   MS. QUINN:   And is there anywhere in the text of  
10   the 1996 master plan that says anything about this property?

11                   MR. SEKEREK:   I didn't come across any specific  
12   references describing the land use.

13                   MS. QUINN:   Okay.   So, when you're referring to  
14   office, it could be one of a few things.   It could be  
15   commercial office use.   It could be special exception  
16   professional office use or special exception office use.   Is  
17   that correct?

18                   MR. SEKEREK:   Yes.

19                   MS. QUINN:   Those are the two choices.   Another  
20   choice would be a home office, an owner-occupied home  
21   office.   Is that correct?

22                   MR. SEKEREK:   That would also be an office use.

23                   MS. QUINN:   Right.   Okay.   So, going --

24                   EXAMINER:   Well, it wouldn't permit commercial  
25   office because the zoning plan says R60.   Right?

1 MR. SEKEREK: Yes. I --

2 MS. QUINN: That's where I was just about to go.

3 EXAMINER: I'm sorry. Go ahead. I'll stop  
4 jumping in.

5 MS. QUINN: So, we can eliminate the commercial  
6 office option. Correct? Because that is not indicated on  
7 the commercial plan.

8 MR. SEKEREK: Right.

9 MS. QUINN: Of the three options, the commercial  
10 office would not be an option. Is that correct? According  
11 to page 34.

12 MR. SEKEREK: The land use table in the zoning  
13 ordinance includes a number of things of office. I haven't  
14 examined it for the R60 zoning at this location. I'm not  
15 prepared to testify which of those many different types of  
16 offices could or could not be put on this --

17 EXAMINER: In general, I think what she's getting,  
18 though. In general --

19 MR. SEKEREK: In general.

20 EXAMINER: -- would more intense office uses be  
21 permitted in the commercial zone but not in the R60 zone?

22 MR. SEKEREK: Right. I would certainly conceive  
23 that that the OM zone, C2 zone, et cetera, would permit more  
24 intense office use than a office use that would be only  
25 approved by special exception in the R60.



1 MS. QUINN: Okay. So, you would agree, again,  
2 that on page 34, there is no designation there for this  
3 property for commercial offices?

4 EXAMINER: Okay. I, okay.

5 MR. SEKEREK: Well, it's a zoning plan not use.

6 MS. QUINN: Okay. Commercial zoning plan just  
7 not --

8 EXAMINER: Well, commercial office is --

9 MS. QUINN: I'm just going down the list of  
10 options to show --

11 EXAMINER: Okay. Go ahead.

12 MS. QUINN: Okay. Thank you. Page 34?

13 MR. SEKEREK: Yes.

14 MS. QUINN: Okay. So, you would agree that  
15 property does not show a designation for commercial office  
16 on it as other properties do.

17 MR. SEKEREK: It does not recommend commercial  
18 zoning for the subject property.

19 MS. QUINN: Right. Okay. And on the residential  
20 plan, page 28, there is no difference between the, for this  
21 property, there's no difference between the residential plan  
22 and the existing residential zoning. Correct?

23 EXAMINER: Can you give him page numbers?

24 MS. QUINN: Sorry. Page 28 is the residential  
25 zoning plan.

1 MR. SEKEREK: Yes.

2 MS. QUINN: Which shows --

3 MR. SEKEREK: R60 for the subject property.

4 MS. QUINN: -- R60 for the subject property.

5 MR. SEKEREK: Correct.

6 MS. QUINN: And page 27 shows R60 for the subject  
7 property.

8 MR. SEKEREK: Yes.

9 MS. QUINN: Okay.

10 MR. SEKEREK: Yes.

11 MS. QUINN: And then on page 26 of the master  
12 plan, this is at paragraph, we've looked at before, but just  
13 to confirm, on the third paragraph in the middle. Do you  
14 agree that it says several single family homes along the  
15 west side of Colesville Road between the beltway and  
16 University Boulevard have been converted to office use by  
17 special exception. This location is suitable for special  
18 exception use. However, residences or other special  
19 exception uses are not precluded.

20 MR. SEKEREK: I agree. That's what it says.

21 MS. QUINN: So, it points to the properties along  
22 Colesville Road south of University, north of the beltway,  
23 but it does not mention the property at 220 University  
24 Boulevard. Is that correct?

25 MR. SEKEREK: That's correct.

1 MS. QUINN: So, would you agree then that the plan  
2 makes no mention of special exception for this property or  
3 commercial office zoning?

4 MR. SEKEREK: I do not agree that the absence of a  
5 specific recommendation --

6 MS. QUINN: I'm just asking does it mention it in  
7 the text at all.

8 EXAMINER: Well, that's what you said first but  
9 then you said do you agree. Does it mention it at all?

10 MR. SEKEREK: There's no specific discussion of  
11 the subject property --

12 EXAMINER: Okay.

13 MR. SEKEREK: -- one way or the other.

14 MS. QUINN: Okay. So, that's the 1996 plan. Now,  
15 going back to the zoning ordinance, section 59-A-2.1, are  
16 you aware that in 1990, the law changed so that someone who  
17 was a home health practitioner, even though there wasn't a  
18 category for it at the time, after 1990 it was required if  
19 it's a new establishment, not a grandfathered one. Okay?  
20 Like a new person coming in and establishing that use on a  
21 property after, the dates actually in here.

22 EXAMINER: Well, we'll just --

23 MS. QUINN: 1990. That after that date, if they  
24 established that use, they would be required to register as  
25 a home health practitioner and obtain a permit.

1 MR. SEKEREK: To answer your question, I'm not  
2 aware.

3 MS. QUINN: Okay.

4 MR. SEKEREK: I'm not that familiar with this much  
5 less its history.

6 MS. QUINN: But, if you were to review this and  
7 become familiar with it and you agreed that it said that,  
8 would you agree that if Dr. Strahan came in 1991 and  
9 established this use, the same size, the same, he lived in  
10 the house. He practiced small dentistry office, that he  
11 would be required to get a permit for that use but not a  
12 special exception?

13 EXAMINER: I think it's a question as to the  
14 intensity of the use. Based on what you've heard about the  
15 use, if you can answer. But, you know what? I think he's  
16 already answered this question, Ms. Quinn, because he's  
17 already said he has to look at the code more to know what  
18 use would be there --

19 MS. QUINN: Okay.

20 EXAMINER: -- whether it would qualify or not.  
21 So, I'm --

22 MS. QUINN: But, if that's --

23 MR. SEKEREK: Or is it --

24 MS. QUINN: If that's the case then his statement  
25 that there was a nonresidential use on this property and

1 that it's designated in the master plan for nonresidential  
2 use may not be appropriate since if Dr. Strahan would be  
3 considered a home health practitioner, it would not be a  
4 nonresidential use.

5 EXAMINER: I agree.

6 MS. QUINN: Okay.

7 EXAMINER: I understand, well, I understand the  
8 point, and you've made the point by asking the question but  
9 I can't force Mr. Sekerek to testify to what he doesn't  
10 know.

11 MS. QUINN: Right.

12 EXAMINER: When we end this hearing, if you have  
13 those kinds of points to make, if you can't drag it out of  
14 the witness because he doesn't know, and he can't answer,  
15 you can make that point in closing arguments. Okay? So,  
16 what you --

17 MS. QUINN: I was asking him as an expert in land  
18 use. I thought perhaps he would know.

19 EXAMINER: Yes. But, he said he can't.

20 MS. QUINN: Okay. I accept it.

21 EXAMINER: He said he doesn't know and in a way,  
22 it's hearsay based, from my standpoint, it's hearsay based  
23 on hearsay based on hearsay. I think it is relevant as to  
24 what you said as far as what the master plan was recognizing  
25 but to ask him, who has -- your side had personal knowledge

1 of the or the opposition side has personal knowledge of the  
2 use, and I'm going to consider that. But, you're asking him  
3 based on too many variables that he isn't aware of. Now,  
4 you've made the point, and you can argue and there is  
5 evidence in the record that it was a very small scale use  
6 basically, and maybe not as -- not comparable for the  
7 purposes of determining master plan consistency. All right?

8 MS. QUINN: Okay.

9 EXAMINER: But continuing to ask him the question  
10 when he can't answer doesn't mean your point is lost. You  
11 still have the opportunity to make that point on closing  
12 arguments.

13 MS. QUINN: And it was asked in response to his  
14 statement --

15 EXAMINER: That it was a --

16 MS. QUINN: -- which is the first time I've heard  
17 that statement that that was a nonresidential use. So --

18 EXAMINER: Right.

19 MS. QUINN: That is my point.

20 EXAMINER: Right.

21 MS. QUINN: Okay.

22 EXAMINER: But he doesn't have the -- I don't  
23 consider his level of knowledge of the use sufficient to  
24 really force him to answer your questions.

25 MS. QUINN: Right. And I don't mean to force.

1 I'm just asking.

2 EXAMINER: No. It's okay. I know you're not a  
3 lawyer. So, I'm trying to explain it a little to you.  
4 You've made a point. The evidence in the record is, you  
5 know, that it was two dentists and a receptionist and very,  
6 very small practice, and that's something you still get an  
7 opportunity to raise all these points in your closing  
8 argument. Okay?

9 MS. QUINN: Okay. And I would just refer back to  
10 Exhibit 149C, the picture in the lower right corner which  
11 is, in the lower left corner, which are pictures of the area  
12 that the 1996 plan specifically mentions as suitable for  
13 professional offices.

14 EXAMINER: Okay. Can you see that, Mr. Sekerek?

15 MR. SEKEREK: I recall these.

16 MS. QUINN: I think it's also a larger exhibit. I  
17 picked the same house.

18 EXAMINER: Well, whether it is or it isn't, can  
19 you finish asking your question. What was your question  
20 based on that?

21 MS. QUINN: Just that do you agree that these are  
22 pictures representing the area that is designated, that is  
23 mentioned in the 1996 plan as appropriate?

24 MR. SEKEREK: That we discussed just a little bit  
25 earlier --

1 MS. QUINN: Yes.

2 MR. SEKEREK: -- regarding along Colesville Road.

3 MS. QUINN: On page 20.

4 MR. SEKEREK: Yes. I recognize that one home  
5 there as the one on the corner of Colesville and Lanak on  
6 the northeast or I'm sorry, northwest quadrant.

7 MS. QUINN: Okay. Okay. And then, finally, have  
8 you in working on this case have you referred to the, have  
9 you become familiar with the 1986 Four Corners sector plan?

10 MR. SEKEREK: It's been a long time since I've --

11 EXAMINER: Okay. What's the relevance of the  
12 1986?

13 MS. QUINN: 1986 plan also indicates that those  
14 properties on west Colesville Road are suitable for special  
15 exception.

16 EXAMINER: Okay.

17 MS. QUINN: And it shows --

18 MS. MEAD: I don't see the relevance of what the  
19 1986 plan said about other properties.

20 EXAMINER: Okay.

21 MS. QUINN: Well, if I could --

22 EXAMINER: I'm going to let it in. What is it?  
23 176. I'm going to let it in and this is an excerpt from the  
24 1986 master plan?

25 MS. QUINN: Four Corners sector plan.



1 EXAMINER: 1986 Four Corners sector plan.

2 MR. SEKEREK: Sector plan for Four Corners and  
3 vicinity.

4 EXAMINER: Okay.

5 MR. SEKEREK: As amended in 1988.

6 EXAMINER: Okay. Go ahead, Ms. Quinn. Now, is  
7 there a copy for Mr. Sekerek?

8 MS. QUINN: Yes, actually.

9 EXAMINER: Thank you.

10 MR. LEIBOWITZ: Maybe not for Mr. Leibowitz but  
11 Mr. Sekerek for now.

12 EXAMINER: Huh?

13 MR. LEIBOWITZ: Maybe not for Mr. Leibowitz but  
14 Mr. Sekerek got one.

15 EXAMINER: Do you have one to share with Mr.  
16 Leibowitz, Ms. Quinn?

17 MS. QUINN: I definitely do. I'm just trying to  
18 locate it. Oh. Here you go. Did I give you one?

19 MS. MEAD: No.

20 MR. SEKEREK: No.

21 MS. MEAD: You do?

22 MR. SEKEREK: No.

23 EXAMINER: Here, I'll tell you what. I'll give up  
24 mine.

25 MR. SEKEREK: 86, 88?

1 EXAMINER: I'll give up mine, and you guys --

2 MS. QUINN: No. They have it.

3 EXAMINER: Oh. They do? Does Mr. Leibowitz -- is  
4 he able to look at it?

5 MS. QUINN: Yes. So, on page 33, which is the  
6 land use plan, do you see the properties located on the west  
7 side of Colesville Road below University Boulevard that have  
8 two asterisks?

9 MR. SEKEREK: I see the two asterisks. Yeah. The  
10 individual properties aren't delineated, but I see the two  
11 asterisks.

12 MS. QUINN: And that in the land use plan legend--

13 MR. SEKEREK: Uh-huh.

14 MS. QUINN: -- what does it say for the asterisk?

15 MR. SEKEREK: Suitable for professional office as  
16 a special exception use. See text.

17 MS. QUINN: And then ,at the 220 West University  
18 Boulevard, what does the legend show for that?

19 MR. SEKEREK: Residential.

20 MS. QUINN: Okay. So, between -- and then if you  
21 go back to page 1 of the plan, at the bottom under the  
22 zoning plan, do you agree that it says the plan recommends  
23 reconfirmation of existing residential and commercial  
24 zoning?

25 MR. SEKEREK: Yes.

1 MS. QUINN: Then on the following page in the last  
2 bullet?

3 MR. SEKEREK: Where there's a handwritten  
4 asterisks?

5 MS. QUINN: Yes.

6 MR. SEKEREK: Uh-huh.

7 MS. QUINN: Which is my mark.

8 MR. SEKEREK: All right, I reckon.

9 MS. QUINN: Okay. That it says that it, the urban  
10 design study, recommends stabilization of the transition  
11 between commercial and residential uses?

12 MR. SEKEREK: That's what it says.

13 MS. QUINN: Okay. And so between 1986 and 1996,  
14 the 1996 plan shows, on the land use plan, a designation for  
15 office as you've mentioned --

16 MR. SEKEREK: Uh-huh.

17 MS. QUINN: -- but no text within the 1996 plan to  
18 state what type of office that is.

19 MR. SEKEREK: Correct.

20 MS. QUINN: Is that correct? Okay. And that if  
21 you were able to -- if you did agree that the category of  
22 home health practitioner's office would apply for Dr.  
23 Strahan is it possible that the reason that that designation  
24 is there in the 1996 plan is that the rules changed in 1990  
25 which is between the 1986 plan and the 1996 plan? And when

1 I say the rules change, the use would require then, a permit  
2 and a registration.

3 MR. SEKEREK: The '96 plan is not specific of the  
4 type of use based on the type of entitlement process it  
5 would need to achieve to it. Simply, what we rely on is,  
6 well, plain language of recommending office use whether or  
7 not it needed a permit or was a pre-existing use or a  
8 special exception. It still recommends it for  
9 nonresidential use.

10 MS. QUINN: Or a home office use. Owner-occupied.

11 MR. SEKEREK: Yes. Yes. Which would be office  
12 use and a residence.

13 MS. QUINN: But it is not recommended as a special  
14 exception use for a commercial office zone in the 1996 plan.

15 MR. SEKEREK: There is no specific discussion of  
16 this particular site.

17 MS. QUINN: Thank you. One last thing. You  
18 mentioned the two other special exception cases, Goddard and  
19 Dayhill, and you're aware that the Dayhill School, their  
20 master plan, actually recommends building a daycare on that  
21 very site?

22 MR. SEKEREK: It's been awhile since I've reviewed  
23 that case, but it wouldn't surprise me.

24 MS. QUINN: Okay. And that that lot size is over  
25 twice the size of this lot, 80,802 square feet?

1 MR. SEKEREK: Yes.

2 MS. QUINN: And that it's located in a combination  
3 split zone commercial transition and R200?

4 MR. SEKEREK: Special exceptions for the R200  
5 portion, yes.

6 MS. QUINN: Okay. Right. Okay. And that The  
7 Goddard School master plan specifically says, recommends  
8 that that area needs daycare services. So, building  
9 anywhere was, not anywhere but --

10 MR. SEKEREK: I, I submitted it, yeah.

11 MS. QUINN: They've recommended establishing more  
12 daycare in that location, in that master plan.

13 MR. SEKEREK: Master plans often specifically  
14 recognize that daycare centers are a building block and a  
15 community-serving service.

16 MS. QUINN: Okay. And The Goddard School is  
17 located in R200 zone?

18 MR. SEKEREK: Yes.

19 MS. QUINN: And the specific lot is five acres?

20 MR. SEKEREK: It wasn't subdivided at that time.  
21 So, I would have to review this to find out what the plan  
22 size of the resulting lot would be.

23 MS. QUINN: And does the Four Corners master plan,  
24 1996, make any specific recommendations about adding  
25 daycare?

1           MR. SEKEREK: It recognizes it along with places  
2 of worship.

3           MS. QUINN: Does it make any recommendations  
4 similar to -- the Dayhill School recommended specifically  
5 daycare on that site and the Goddard School recommended that  
6 they needed more daycare in that area. Does the Four  
7 Corners master plan make any type of recommendation on  
8 daycare other than that we have, there were existing  
9 daycares in the master plan area?

10          MR. SEKEREK: It did identify some daycare, some  
11 existing daycares some of which no longer exist such as the  
12 one right across the street for Uesheba with a special  
13 exception.

14          MS. QUINN: But, your aware that this particular  
15 area has a number of daycare centers that are located, by  
16 right, within religious institutions and other schools?

17          MR. SEKEREK: Within the master plan area?

18          MS. QUINN: Yes.

19          MR. SEKEREK: Yes.

20          MS. QUINN: Okay.

21          MR. SEKEREK: We'd be hard pressed to find a  
22 master plan area that did not include daycare centers.

23          MS. QUINN: And that none of those have required a  
24 special exception with the exception of the YMCA that  
25 modified its building.

1           MR. SEKEREK: I'm aware of the YMCA. I have not  
2 done an exhaustive search on the entire Four Corners master  
3 plan area to find out if there are any other daycare centers  
4 that were provided through special exception.

5           MS. QUINN: Thank you. That's all I have.

6           EXAMINER: Okay. Thank you. Mr. Leibowitz, has  
7 she left you anything to ask?

8           MR. LEIBOWITZ: Fortunately, yes.

9           MS. QUINN: I think so.

10          EXAMINER: Go ahead.

11          MR. LEIBOWITZ: I'm going to pick up where she  
12 left off, actually. Mr. Sekerek, you're not familiar with  
13 any daycares that require special exceptions within the Four  
14 Corners other than the Y?

15          MR. SEKEREK: I'm not aware. Yet, I have not  
16 looked into -- I looked into all special exceptions within  
17 the defined neighborhood. I'm aware of a number of others  
18 outside that but I haven't done an exhaustive search.

19          MR. LEIBOWITZ: And you found that there were a  
20 number of daycares within the defined area?

21          MR. SEKEREK: I'm aware that there --

22          MR. LEIBOWITZ: You said --

23          MR. SEKEREK: That there=s special exceptions  
24 within the --

25          MR. LEIBOWITZ: Not special exceptions but just

1     daycares generally.

2             MR. SEKEREK:   There are no daycare special  
3 exceptions within the defined neighborhood.   Now, Ueshiba  
4 has expired as permissible.

5             MR. LEIBOWITZ:   The special exception=s expired?

6             MR. SEKEREK:   Yes.

7             MR. LEIBOWITZ:   Okay.   The Ueshiba itself has been  
8 gone for 20 years.

9             MR. SEKEREK:   Yeah.

10            MR. LEIBOWITZ:   Let's talk about The Goddard  
11 School.   You had, in response to one of Ms. Quinn's  
12 questions, she said that that master plan governing the --  
13 where the Goddard School is specifically recommends daycare  
14 in that area, and your response was basically oh, master  
15 plans like daycare.   So, that doesn't surprise me.   Is it  
16 fair to say --

17            MR. SEKEREK:   A little trite but I have not  
18 reviewed the Clarksburg master plan or is it that  
19 Gaithersburg --

20            MR. LEIBOWITZ:   All right.

21            MR. SEKEREK:   -- Gaithersburg master plan  
22 regarding their language

23            MR. LEIBOWITZ:   Okay.

24            MR. SEKEREK:   It's a thick book, and I just  
25 haven't.   I'm not familiar with it.



1           MR. LEIBOWITZ: If it did recommend daycare in  
2 that area, that would be in contrast to the Four Corners  
3 master plan.

4           MR. SEKEREK: When you say in that area, do you  
5 mean on that site in that defined neighborhood or within the  
6 entire master plan area?

7           MR. LEIBOWITZ: It's within that defined  
8 neighborhood. Not on that particular site as in The Dayhill  
9 case but in that defined neighborhood.

10          MR. SEKEREK: Okay. Now, could you repeat the  
11 question.

12          MR. LEIBOWITZ: You asked me to clarify. In The  
13 Dayhill case, the master plan is for that specific site.  
14 The Goddard, my understanding, is that it's not for that  
15 specific site but for that defined area.

16          MR. SEKEREK: That defined neighborhood?

17          MR. LEIBOWITZ: That defined neighborhood. So, if  
18 that were correct, that would be in contrast to this master  
19 plan.

20          MR. SEKEREK: I find it difficult to believe that  
21 the master plan anticipated the neighborhood for that  
22 special exception application.

23          MR. LEIBOWITZ: Let me just ask it. You're saying  
24 that may not be correct. But, if that were correct then  
25 that would be in contrast to this specific Four Corners

1 master plan.

2 MR. SEKEREK: This Four Corners master plan is not  
3 specific per the locations that they're recommending daycare  
4 centers. I'm not aware of how specific the Clarksburg  
5 master plan is.

6 MR. LEIBOWITZ: Okay. Let's stick with Goddard.  
7 But, to change subjects a little bit regarding the parking.  
8 You had compared the waiver for the Goddard parking to the  
9 parking situation that's proposed in this case. Are you  
10 aware or do you agree that at the Goddard location, there's  
11 a special protection area to protect trees and other  
12 environmental factors?

13 MR. SEKEREK: Yes. It's within the Clarksburg  
14 special SPA.

15 MR. LEIBOWITZ: And that that was a significant  
16 motivating factor in the parking waiver so as not to impose  
17 anymore than necessary on the SPA.

18 MR. SEKEREK: The goal of limiting impervious area  
19 to the minimum necessary is a special protection area goal  
20 not that it should be applied to the extent where there  
21 would be insufficient parking.

22 MR. LEIBOWITZ: We don't have an SPA here.

23 MR. SEKEREK: It's one of the beauties of this  
24 site is how fully utilizable it is.

25 MR. LEIBOWITZ: So, that was yes?

1           MR. SEKEREK: We do not have an SPA. Sorry. No  
2 special protection area. Yes. A very long winded yes. We  
3 do not have a special protection area on this site.

4           MR. LEIBOWITZ: Okay. You spent a while talking  
5 about how the size and scale of a building couldn't be  
6 determined in mere numbers. You compared it to a paint by  
7 number for an artist. Did I encapsulate your testimony  
8 accurately?

9           MR. SEKEREK: I=ll grant you that. Okay.

10          MR. LEIBOWITZ: Okay. So you=re of the opinion  
11 that, and I think you've testified in the past along these  
12 lines, this could be a residential scale, this building, if  
13 it were 10,000 square feet.

14          MR. SEKEREK: That was my opinion. It was  
15 residential in character and scale with the initial  
16 application.

17          MR. LEIBOWITZ: I don't want to get into a back  
18 and forth with you. Let me ask the question again --

19          MR. SEKEREK: Okay.

20          MR. LEIBOWITZ: -- and see if I can get a direct  
21 answer.

22          MR. SEKEREK: All right.

23          MR. LEIBOWITZ: You are of the opinion that this  
24 could be a residential scale, this proposed building, if it  
25 were 10,000 square feet. That would be possible.

1           MR. SEKEREK: I don't recall testifying,  
2 specifically, to 10,000 square feet but I would imagine that  
3 there would be design solutions in order to achieve that.  
4 Yes. In the context of a large lot. Yes.

5           MR. LEIBOWITZ: And even on this lot?

6           MR. SEKEREK: Yes. That's been a finding of many  
7 daycare centers or other special exception uses in  
8 residential zones for a building of that size.

9           MR. LEIBOWITZ: I'm asking what your opinion.

10          MR. SEKEREK: Okay. Yes. That I would agree with  
11 those other approvals that residential character and scale  
12 criteria can be met with a 10,000 square foot building.

13          MR. LEIBOWITZ: Would you agree that it could be  
14 residential in character and scale to a 20,000 square foot  
15 building.

16          MR. SEKEREK: Again, we got to look at the  
17 context.

18          MR. LEIBOWITZ: The context is this building.  
19 This proposal on this lot.

20          MR. SEKEREK: Under what design?

21          EXAMINER: Well, his question is could you  
22 mitigate a 20,000 square foot building by design to make it  
23 residential in scale?

24          MR. SEKEREK: It would start taking more  
25 extraordinary measures such as underground parking and maybe

1 even some, you know, underground other use, et cetera.

2 MR. LEIBOWITZ: But, yes.

3 MR. SEKEREK: As, you know, it takes again -- just  
4 certainly because it's more challenging. Let me put it that  
5 way. I'm not going to be able to come up with a number of  
6 when we hit the threshold of you can no longer become  
7 residential.

8 MR. LEIBOWITZ: The answer I heard was yes. You  
9 believe that it could, a 20,000 square foot building, could  
10 be residential in scale on this lot.

11 MR. SEKEREK: I wouldn't rule it out.

12 MR. LEIBOWITZ: Okay.

13 MS. QUINN: On this lot?

14 MR. LEIBOWITZ: Now, you say a couple of areas  
15 where the planning board agreed with positions of yours but  
16 the planning board also recommended that for this proposed  
17 building to be of residential size and scale that it be no  
18 larger than twice neighboring homes.

19 MR. SEKEREK: I'm aware of the planning board's  
20 recommendation. Yes.

21 MR. LEIBOWITZ: Is that correct?

22 MR. SEKEREK: I think that's familiar. Correct.

23 MR. LEIBOWITZ: Now, you testified a number of  
24 times that the neighboring home on lot 9, which is 214. I'm  
25 sorry. 413 Gilmore.

1 MR. SEKEREK: Gilmore.

2 MR. LEIBOWITZ: You described it as small, very  
3 small, et cetera, numerous times. Right?

4 MR. SEKEREK: That building relative to their  
5 opposing neighbor. Yes.

6 MR. LEIBOWITZ: Would it surprise you to learn  
7 that it's only 66 square feet smaller than the average home  
8 in the defined neighborhood?

9 MR. SEKEREK: I previously testified regarding  
10 that I disagreed with the computations of the average, the  
11 data used to average the size let alone the applicability of  
12 it but the accuracy of that information.

13 MR. LEIBOWITZ: Okay. Would it surprise you to  
14 learn that it's only 66 square feet smaller than the average  
15 home in the neighborhood?

16 EXAMINER: I couldn't hear that.

17 MR. SEKEREK: Does that differ from the previous  
18 question?

19 MR. LEIBOWITZ: No. It's the same exact question  
20 but you didn't answer the last question. You answered a  
21 different question.

22 MR. SEKEREK: I do not know what the average size  
23 home in the neighborhood is. We do not have the information  
24 to determine that.

25 MR. LEIBOWITZ: Because you think that the

1 planning staff is wrong in their calculation?

2 MR. SEKEREK: And I've demonstrated that.

3 MR. LEIBOWITZ: Let's talk about that. You  
4 testified that 214 West University Boulevard is two stories,  
5 one and a half stories. Right?

6 MR. SEKEREK: One or two stories.

7 EXAMINER: No. Wait. I think you said between  
8 one and two but maybe a partial.

9 MR. SEKEREK: The definition of stories in the  
10 zoning ordinance, it's, a half story is something different.  
11 It's when an upper level has --

12 EXAMINER: Okay.

13 MR. SEKEREK: -- only a portion of it less than  
14 six and a half feet in head room.

15 EXAMINER: I understand what you're saying.

16 MR. SEKEREK: So, it is one story for part of the  
17 building, two stories in another part of the building.  
18 Definition of whether it's a story hinges on whether it's a  
19 cellar or a basement. I'm just trying to be accurate with  
20 the terms in the zoning ordinance.

21 MR. LEIBOWITZ: Okay. And the lot that we're  
22 talking about is, I'm using Exhibit 99C, just northeast of  
23 the proposed site. This is the one we were talking about  
24 which is 214 University Boulevard. Correct?

25 MR. SEKEREK: I understand.

1 EXAMINER: Actually, it's due east. It's almost  
2 due east.

3 MR. SEKEREK: Yeah.

4 EXAMINER: Whatever.

5 MR. LEIBOWITZ: I don't want to confuse this list.

6 EXAMINER: Yes. It's 413 Gilmoure.

7 MR. LEIBOWITZ: It's 413 Gilmoure.

8 EXAMINER: Okay.

9 MR. LEIBOWITZ: So, it's north of --

10 EXAMINER: Yes.

11 MR. LEIBOWITZ: And this you used a GIS survey to  
12 create this exhibit. Correct?

13 MR. SEKEREK: Yes.

14 MR. LEIBOWITZ: Is it fair to say that a GIS  
15 survey isn't necessarily perfect and accurate?

16 MR. SEKEREK: I would agree.

17 MR. LEIBOWITZ: Is it also fair to say that  
18 sometimes when structures are close together in a GIS  
19 survey, it shows them as the same, as one structure rather  
20 than two?

21 MR. SEKEREK: Yes.

22 MR. LEIBOWITZ: And, in fact, when you testified  
23 previously, we discovered that, in fact, this was two  
24 structures not one structure.

25 MR. SEKEREK: I agree.



1           MR. LEIBOWITZ: Okay. And so the representation  
2 on the map is a little bit misleading because it's shown as  
3 one structure.

4           MR. SEKEREK: Yes. They're very close but there  
5 is a gap between the garage and the, well, that's not  
6 between.

7           MR. LEIBOWITZ: Okay. And if it were only one  
8 story, would that affect your calculation of the size, the  
9 square footage, of this house that's 214 West University?

10          MR. SEKEREK: I believe any of the information  
11 I've done, I've either just simply considered it as one  
12 story or certainly qualified --

13          EXAMINER: I'm sorry. You said one story?

14          MR. SEKEREK: One story. Right. Because I could  
15 not --

16          EXAMINER: I understood.

17          MR. SEKEREK: -- confidently express that it was  
18 two stories --

19          MR. LEIBOWITZ: Okay. So, do I --

20          MR. SEKEREK: -- for any portion of it.

21          MR. LEIBOWITZ: So, I don't need to introduce  
22 photographs that would show that one story. You agree it's  
23 one story?

24          MR. SEKEREK: No. That there are portions of it  
25 that I really wasn't --

1 EXAMINER: Well, do you want to establish --

2 MR. LEIBOWITZ: All right.

3 MR. SEKEREK: That would be fine.

4 EXAMINER: -- that it's one story. He's not going  
5 to tell you that --

6 MR. LEIBOWITZ: What exhibit are we up to?

7 MS. MEAD: 177.

8 MR. LEIBOWITZ: 177. I'm going to, for the  
9 moment, give the witness the colored copy. This we'll call  
10 177 A and B

11 EXAMINER: Okay.

12 MR. LEIBOWITZ: And these are photographs of two  
13 different angles of 214 West University Boulevard and at A  
14 you can make out the house and the (indiscernible). All  
15 right. So, if you look at 177A, do you agree that this is  
16 the front of the house?

17 MR. SEKEREK: Yes.

18 MR. LEIBOWITZ: And it looks like one story.

19 MR. SEKEREK: Yes.

20 MR. LEIBOWITZ: And if we turn to B, we can see  
21 that it's two buildings. There is a two-car garage, it  
22 appears like.

23 MR. SEKEREK: Yes.

24 MR. LEIBOWITZ: And which is also -- appears to be  
25 one story.

1 MR. SEKEREK: Yes.

2 MR. LEIBOWITZ: And we can see part of the house  
3 which also could just be one story.

4 MR. SEKEREK: You're saying that the end of the  
5 house is Exhibit A?

6 MR. LEIBOWITZ: Correct.

7 MR. SEKEREK: In Exhibit A, you can see the corner  
8 of the garage.

9 MR. LEIBOWITZ: Right. And it appears to be one  
10 story.

11 MR. SEKEREK: Yes. I'll share.

12 MS. MEAD: You get these again.

13 MR. SEKEREK: Okay. It's the other end. It's the  
14 other end that we need to see.

15 MR. LEIBOWITZ: Based on looking at this exhibit,  
16 is it fair to say that the size and scale of the proposed  
17 building, the proposed daycare building, is much larger than  
18 what we actually see in these photographs?

19 MR. SEKEREK: These photographs? No. These  
20 photographs don't show the entire building.

21 MR. LEIBOWITZ: So, you disagree.

22 MR. SEKEREK: We're able to just, yes.

23 EXAMINER: So, yeah. You just answer. You can't  
24 tell.

25 MR. LEIBOWITZ: Now, one of the concerns of the

1 master plan was that there, let me ask this. Do you agree  
2 that one of the concerns of the master plan is that there  
3 would be a spread of nonresidential uses away from the Four  
4 Corners commercial district, Four Corners commercial area?

5 MR. SEKEREK: There should be an encroachment.

6 MR. LEIBOWITZ: Right. That --

7 EXAMINER: He agreed.

8 MR. LEIBOWITZ: Okay. And do you agree that  
9 approximately one block to the east of the proposed site is  
10 the Safeway?

11 MR. SEKEREK: Right. The Safeway's clearly shown  
12 in a number of our exhibits.

13 MR. LEIBOWITZ: Okay. But, my question is do you  
14 agree that that's approximately one block to the east?

15 MR. SEKEREK: There's not an intervening street  
16 other than the one that's Safeway. It's a long street.  
17 Bear with me.

18 MR. LEIBOWITZ: It's not a trick question.

19 MR. SEKEREK: Well, if you -- yes. It's a long  
20 block.

21 EXAMINER: Okay.

22 MR. SEKEREK: One deeper. There would be three  
23 blocks if it was one. Yeah.

24 EXAMINER: So, it's longer than what you would  
25 think of as a city block?

1 MR. SEKEREK: Yes.

2 MR. LEIBOWITZ: Depending on what city your in, I  
3 suppose.

4 MR. SEKEREK: Good point.

5 EXAMINER: Well, can you think of another way to  
6 quantify it since blocks seems to be --

7 MR. SEKEREK: It's one block.

8 MR. LEIBOWITZ: Yes. In this neighborhood, it is  
9 one block over.

10 MR. SEKEREK: Of that location.

11 MR. LEIBOWITZ: Okay.

12 EXAMINER: Okay.

13 MR. LEIBOWITZ: And you've noted a few times in  
14 your testimony that obviously the Safeway is a commercial  
15 use.

16 MR. SEKEREK: Yes.

17 MR. LEIBOWITZ: Okay. And you note a few times in  
18 your testimony that right across the street, right across  
19 Burnett from the proposed site is the Buddhist Temple, the  
20 house of worship.

21 MR. SEKEREK: Yes.

22 MR. LEIBOWITZ: And that is also a nonresidential  
23 use.

24 MR. SEKEREK: Yes.

25 MR. LEIBOWITZ: And so this would be an additional

1 nonresidential use in that block, that immediate block, away  
2 from the commercial district.

3 MR. SEKEREK: It would be a nonresidential use.  
4 The additional I don't agree with because of the  
5 nonresidential use of the property previously.

6 MR. LEIBOWITZ: Okay. Let's talk about the use of  
7 the property. So, well, we're not going to talk about the  
8 use of the property. Previously, I see Ms. Quinn already  
9 went over that in some detail with you. You compared it to,  
10 the size and the scale, to the five homes that were proposed  
11 on this lot prior to this proposal. Right?

12 MR. SEKEREK: Yes.

13 MR. LEIBOWITZ: Okay. Would you agree that the  
14 intensity of the use of the proposed daycare would be  
15 greater than the intensity of the use of five residences on  
16 the same place?

17 MR. SEKEREK: Intensity? By what measure?

18 MR. LEIBOWITZ: Well, how about the number of  
19 persons that would go to the lot each day?

20 MR. SEKEREK: Persons. I would agree.

21 MR. LEIBOWITZ: Do you think it's even a close  
22 call?

23 MR. SEKEREK: In persons?

24 MR. LEIBOWITZ: In people. Yes.

25 MR. SEKEREK: No. No. The daycare center would

1 have more persons.

2 MR. LEIBOWITZ: Right. In fact, the daycare  
3 center could have 76 students and 15 staff people --

4 MR. SEKEREK: Staff.

5 MR. LEIBOWITZ: -- and that's 91 already and there  
6 could be numerous vendors that come on a given day. So, you  
7 could be at 95 perhaps and there may be as many as 60 to 70  
8 parents who come. So, you could be over 150 individuals  
9 that are coming to that property.

10 MR. SEKEREK: Certainly at one time but yeah.

11 MR. LEIBOWITZ: Not at one time. But there could  
12 be over 150 people that are there on any given --

13 MR. SEKEREK: I agree. In terms of persons, the  
14 intensity of the daycare center is more than five single  
15 family homes.

16 MR. LEIBOWITZ: And in terms of vehicles, it would  
17 be much greater.

18 MR. SEKEREK: Yes.

19 MR. LEIBOWITZ: Now, those homes, of course, we  
20 know weren't finished. Right?

21 MR. SEKEREK: Correct. Correct.

22 MR. LEIBOWITZ: Okay. But had they been built,  
23 they would have been the biggest houses in the south Four  
24 Corners neighborhood. Right?

25 MR. SEKEREK: The entire south Four Corners? I

1 don't know regarding the entire south Four Corners.

2 MR. LEIBOWITZ: Would they have been the biggest  
3 houses in the defined neighborhood.

4 MR. SEKEREK: You're not going to like this but  
5 other than 219, yes.

6 MR. LEIBOWITZ: Okay. So, other than 219, they  
7 would have been the biggest houses in the defined  
8 neighborhood?

9 MR. SEKEREK: They would have. Yes.

10 MR. LEIBOWITZ: Okay. And you are familiar with  
11 the concept of a McMansion?

12 MR. SEKEREK: Yes.

13 MR. LEIBOWITZ: Okay. And is it fair to say that  
14 a McMansion is a residence that is built that may be -- it's  
15 a residence but it's not necessarily in the same size and  
16 character of the other houses in the neighborhood.

17 MR. SEKEREK: Or any other term for a new  
18 construction if you want it to be a like term. I don't know  
19 what the definition of a McMansion is but --

20 EXAMINER: Would they have been out of scale with  
21 the other homes in the neighborhood?

22 MR. SEKEREK: Out of scale? No. They were  
23 residences by definition. They had residential  
24 articulation, everything you would look for in a residence.  
25 They were not, you know, grossly out of scale. They would



1 have been larger. But, again, compatibility and scale  
2 doesn't mean reclamation.

3 MR. LEIBOWITZ: You weren't on the committee or  
4 personally involved in any way in developing the 1996 Four  
5 Corners master plan.

6 MR. SEKEREK: I was not.

7 MR. LEIBOWITZ: Okay. So, when you opine as to  
8 what it means, that's based on your interpretation not based  
9 on any first hand knowledge of any discussions in drafting  
10 it.

11 MR. SEKEREK: I am an expert in reading and  
12 interpretation of master plans, especially in this  
13 jurisdiction.

14 UNKNOWN MALE: I did not write it.

15 MR. LEIBOWITZ: Okay. Let me ask the question  
16 again. When you opine as to the master plan, it's based on  
17 your interpretation not as to any personal knowledge  
18 regarding discussions that were had or the direct intent of  
19 the people who did, in fact, draft it.

20 MR. SEKEREK: I was not participating in that.

21 MR. LEIBOWITZ: Just one other thing. If we go  
22 one block west on University Boulevard from the proposed  
23 site, do you agree that about one block west is the Four  
24 Corners Medical Center.

25 MR. SEKEREK: Yes.

1 MR. LEIBOWITZ: Okay. Which is also a commercial  
2 use.

3 MR. SEKEREK: Yes.

4 MR. LEIBOWITZ: I have no further questions.  
5 Could we take a one minute break?

6 EXAMINER: Sure.

7 MR. LEIBOWITZ: Or 10 maybe?

8 EXAMINER: How about five? Okay? Because one is  
9 hard to do. We'll take a five --

10 MR. SEKEREK: I'm closer to the men's room than  
11 you are.

12 EXAMINER: We'll take a five minute break and  
13 we'll --

14 (Off the Record)

15 (On the Record)

16 EXAMINER: Okay. We're back on the record. Mr.  
17 Leibowitz, is that -- you're done with your questions?

18 MR. LEIBOWITZ: Yes.

19 EXAMINER: Ms. Mead, you can redirect. Let me  
20 just suggest that we not -- I know what the planning board  
21 said. I know what technical staff had said. So, let's not  
22 go back over documents that are already in the record. So,  
23 if you have something, you know, you still have a closing  
24 argument. So, if you have something to ask him but let's  
25 not ask him what the planning board said or what technical

1 staff said. Okay?

2 MS. MEAD: My only question relating to that was  
3 to something the planning staff -- I was going to have Mr.  
4 Sekerek compare the planning staff report with the master  
5 plan, the differences. I can skip it.

6 EXAMINER: I don't understand that.

7 MS. MEAD: Ms. Quinn referred to pages in the  
8 staff report. So, I was going to do redirect on those pages  
9 as far as the planning staff using different terms than the  
10 master plan.

11 EXAMINER: Oh. Okay. All right. That's okay. I  
12 didn't want to have to go through just for the truth of what  
13 they already said. But, if it's -- I see what you're  
14 saying. So, we'll do that. So, why don't you begin.

15 MS. MEAD: Okay. Well, I will start with that.  
16 Let's get it out of the way. Mr. Sekerek, the opposition  
17 had you review page, circle, page 19 and 20 of the December  
18 6, 2010 planning staff report, the attachment from the  
19 vision division regarding the master plan, and then  
20 particularly regarding the last paragraph that they had you  
21 confirm regarding planning staff's recommendation that the  
22 property's located in an area considered by the plan to be  
23 adjacent to the commercial district. Does page 26 of the  
24 master plan use the word immediately adjacent or residential  
25 neighborhood is adjacent?

1           MR. SEKEREK: It's the planning staff that omitted  
2 the word immediate in it's quoted --

3           MS. MEAD: Thank you.

4           MR. SEKEREK: -- in terms of the adjacency.

5           MS. MEAD: In the same planning staff report, the  
6 planning staff refers --

7           EXAMINER: I'm sorry. Which one are you referring  
8 to?

9           MS. MEAD: Page 20 of the Exhibit 47. The  
10 December 6, 2010 planning staff report, before the vision  
11 division.

12           EXAMINER: Okay. All right. I understand. Okay.

13           MS. MEAD: And their recommendations --

14           EXAMINER: And what did they omit?

15           MR. SEKEREK: They said an area considered by the  
16 plan to be adjacent to the commercial district. They  
17 omitted The word immediately adjacent.

18           EXAMINER: Oh. Okay.

19           MR. SEKEREK: An important qualifier to their  
20 thing that they omitted in their staff report.

21           MS. MEAD: Similarly, in the staff report, the  
22 staff report which notes that the special exception to be  
23 contained within a building of residential size and scale  
24 and it's discussion on sector plan consistency. Does page  
25 26 of the sector plan use the word size?

1           MR. SEKEREK: It does not. I believe it omitted  
2 the word character. But, it does not use size. Yes.

3           MS. MEAD: Is it correct that it states that the  
4 plan encourages designs that are residential in character  
5 and scale?

6           MR. SEKEREK: Character and scale. I just found  
7 it on page 26.

8           MS. MEAD: Does the master plan refer to using  
9 average sizes or comparing to the surrounding homes?

10          MR. SEKEREK: No. No. It does not.

11          MS. MEAD: Thank you. And if, referring to  
12 Exhibit 175, the excerpt from the 1986 Four Corners plan and  
13 the land use plan, if you were to opine whether this special  
14 exception would be appropriate for this site based, if you  
15 came in 1990 and were using the 1986 master plan, would your  
16 opinion the same as far as the appropriateness of this site?

17          MR. SEKEREK: Let=s see. They're still  
18 recommending it. There is a residential zone. Daycare is  
19 permitted by special exception in the area. I would have  
20 also analyzed it in context if it's, you know, location  
21 right on University Boulevard. I would have noticed the  
22 previous Ueshiba School and much larger sized daycare center  
23 across the street. It certainly strengthens the  
24 appropriateness when the master plan recommended this for  
25 nonresidential use. This particular property as

1 nonresidential use. But, it wouldn't have precluded the  
2 opportunity to make a, you know, a viable case for a daycare  
3 center on the site regardless.

4 MS. MEAD: Thank you. And to your knowledge, was  
5 the dentist office house, was that structure and/or use, to  
6 your knowledge, was that a special exception use?

7 MR. SEKEREK: There's no record of it being a  
8 special exception use.

9 MS. MEAD: So, on page 26 of the master plan which  
10 opposition had you read and opine to, would it have been  
11 mentioned with the other special exception uses?

12 MR. SEKEREK: It would not have. There was no  
13 special exception for it at that time or any time.

14 MS. MEAD: Thank you. And do the zoning ordinance  
15 requirements for and the counsel's requirements for special  
16 exception daycares, do they require a finding of need for a  
17 daycare in the area?

18 MR. SEKEREK: They do not.

19 MS. MEAD: If they did require a need, would you  
20 have researched it to the daycares in the --

21 MR. SEKEREK: Oh. Certainly.

22 MS. MEAD: -- vicinity of the site?

23 MR. SEKEREK: Certainly.

24 MS. MEAD: And do you know the, if you could  
25 direct us to the date of the master plan that we're

1 referring to, that's applicable to this special exception.

2 MR. SEKEREK: 1996. Adopted and approved 1996.  
3 December 1996.

4 MS. MEAD: So, I know it's late but it's 16 years  
5 old. The master plan.

6 MR. SEKEREK: Yes.

7 MS. MEAD: Would you have anticipated a --

8 MR. SEKEREK: In December. Yes.

9 MS. MEAD: Would you anticipated the language of  
10 the master plan to foresee any daycare need on this  
11 particular site?

12 MR. SEKEREK: That would -- no. It wouldn't have  
13 anticipated 16 years into the future for a particular use on  
14 a particular site. Master plans should not be that  
15 prescriptive.

16 MS. MEAD: And are there general recommendations  
17 in the master plan, though, regarding daycare uses in  
18 residential neighborhoods in the Four Corners master plan?

19 MR. SEKEREK: Previous testimony, we've cited a  
20 number of locations in the master plan recognizing it's an  
21 important element of a vital community.

22 EXAMINER: Page 23. I can tell you. Okay.

23 MS. MEAD: And again, regardless of whether it was  
24 a home occupation, special exception or how it was permitted  
25 or not permitted, the dentist office use on the property,

1 would it have been allowed to continue even if the land use  
2 plan on page 21 had it as a residential recommended use?

3 MR. SEKEREK: That particular dentist office would  
4 have been able to continue.

5 MS. MEAD: Regarding the size of the building, is  
6 our special exception for a 20,000 square foot building?

7 MR. SEKEREK: No. It is not.

8 MS. MEAD: 10,000 square foot building?

9 MR. SEKEREK: No. It is not.

10 MS. MEAD: What is the size of our proposed?

11 MR. SEKEREK: 4,400 square feet.

12 MS. MEAD: Thank you. The exhibit regarding 177A  
13 and 177B, you noted you disagreed that it demonstrated that  
14 it was a one story structure. Can you explain?

15 MR. SEKEREK: Well, I'd be looking for 177C which  
16 would be the other end of the building where it comes in  
17 question whether or not it's constituted a two story  
18 building.

19 MS. MEAD: Regardless of whether 214 University  
20 Boulevard --

21 EXAMINER: Well, you'd have to see all around the  
22 building to know if there's a --

23 MR. SEKEREK: Yes. I certainly understood that  
24 this end of the building was clearly one story.

25 EXAMINER: -- basement first as a cellar. Is that



1    what your saying?

2               MS. MEAD:  Regardless of whether it's one story or  
3   two story, is  your testimony that the footprint is half the  
4   size of the daycare building?

5               MR. SEKEREK:  That's correct.

6               MS. MEAD:  For daycare uses, are trips to and from  
7   the site considered inherent to the use?

8               MR. SEKEREK:  Yes.  Absolutely.

9               MS. MEAD:  And are the children and the  
10   staffing --

11              MR. SEKEREK:  Yes.

12              MS. MEAD:  -- inherent to the site?  And just one  
13   last question on the master plan.  You noted that you  
14   weren't involved in the writing of the master plan.  Who  
15   adopts and approves the master plan?

16              MR. SEKEREK:  The district council.

17              MS. MEAD:  Thank you.  That's all the questions.

18              EXAMINER:  Well, technically, it would be the  
19   commission but never mind.  They do a --

20              MR. SEKEREK:  The final write.  Good point.

21              EXAMINER:  Okay.  Do you have any other witnesses?

22              MS. MEAD:  No.  Mr. Kay answered that for you in  
23   the background.  I'm sure he would like to say a few things  
24   but --

25              EXAMINER:  Do you want to say something.

1 MR. KAY: I wouldn't know where to start.

2 EXAMINER: Okay. Thank you all for your  
3 participation and your patience. I'm not going to take  
4 closing arguments tonight. I'm going to ask you -- there's  
5 a couple of things that I'm going to do. I'm going to issue  
6 a notice of motion to amend the petition because there are  
7 changes to what was previously noticed. Okay? Like the  
8 number of children. I don't think I can issue that until  
9 Tuesday because Monday's a holiday. So, I'm going to do my  
10 best to issue that on Tuesday which is the 17th. I have to  
11 give 10 days for people to object to the motion whether or  
12 not the applicant should be allowed to amend the petition.  
13 That being said, we just -- I know that the other side just  
14 saw the amended specifics of the amended petition today. I  
15 understand you're coming from the aspect that it's  
16 clarification but I do think there's substantive changes.

17 MS. MEAD: In response to the hearing examiner's  
18 questions of the last hearing.

19 EXAMINER: Exactly. So, I am going to let, during  
20 that 10 day period, the opposition can submit comment  
21 limited to the changes in the statement of operations and  
22 the transportation management plan. That's all. As well  
23 as, you know, your -- if you decide you do not want to --  
24 you want to object to the ability of the applicant to amend  
25 the plan. Since the applicant did not get Ms. Quinn's e-

1 mail today, the portions of that e-mail, it's admitted.  
2 It's 163 except for the mobility report references that we  
3 said. You have 10 days to submit any further follow-up that  
4 you think is necessary solely on 163. So, you have the  
5 opportunity during the 10 days to follow-up on the revised  
6 statement of operations and TMP. You have the ability to  
7 follow-up on Exhibit 163. After that, I am -- so, and that  
8 would be, 10 days would be, it would be January 26th. After  
9 that, I'm not going to -- and we should have the transcript  
10 by that time as well. After that, I'm not admitting anymore  
11 evidence. I'll give you each five days to submit written  
12 closings and then that's it. Okay? So, you have one, well,  
13 I'll give you until a week, five days with the weekend in  
14 there. I'll give you until February 3rd to submit written  
15 closing, and then that's it. Okay?

16 MS. MEAD: And just to clarify, we were going to  
17 submit the electronic copies of, the Word versions of and he  
18 PDF of he new photo montage exhibit. I know they're  
19 supposed to be in the record 10 days before it closes.

20 EXAMINER: Oh. That's fine. If that can be in by  
21 the 10 days. The key date for the evidence is January 26,  
22 and let me reiterate that that does not mean a rehash. It's  
23 limited to, solely to the changes in the statement of  
24 operations and TMP. On your side, it's limited to Exhibit  
25 163. I am going to admit Exhibit 159 which is the letter

1 about the 219 West, the infamous 219 West University  
2 Boulevard and --

3 MR. LEIBOWITZ: I heard they're all going to have  
4 us over for dinner when it's done.

5 EXAMINER: I don't think so. I just got to the  
6 brothel part, and I'm not taking that necessarily as, you  
7 know, whether that letter is or is not correct. The other  
8 evidence in the record convinced me that at least as to the  
9 restaurant use. It does deal with the use of the building  
10 but I don't think that they could have constructed that  
11 larger structure in the backyard because it's larger to be  
12 an accessory structure. You can't have two principle  
13 structures on a lot.

14 MS. MEAD: There's no evidence in the record that  
15 it was -- that the zoning inspector found any issue with  
16 that when they were inspecting regarding the use issues.

17 EXAMINER: Yeah. But an accessory structure has  
18 to be in the rear yard, and I'm looking at that and Mr.  
19 Sekerek testified -- you can say something.

20 MR. SEKEREK: The lower level of that's dedicated  
21 to garage. So, there may have been some acknowledgment that  
22 it as an accessory structure because it's garage. It  
23 wouldn't be just quantitative in terms of the floor area and  
24 the size of the structure.

25 EXAMINER: Okay.

1           MR. SEKEREK: So, I don't necessarily agree that  
2 that couldn't have been built legally.

3           EXAMINER: Okay. I stand corrected as to your  
4 position, and I'll give it the weight it deserves. So,  
5 January 26 is the date that -- that's the notice of motion  
6 to amend, any objections, it's the response to Exhibit 163,  
7 and it's any response you wish to make on the revised  
8 statement of operations and transit management plan. That  
9 will be January 26. Then, Friday the 3rd is the date for  
10 closing written statements, written closing statements, and  
11 then I have 30 days from that date to write a  
12 recommendation. I try to get them out before the 30 days.  
13 There, as I said the last time, there's a lot of -- I will  
14 attempt to do it as quickly as possible.

15           After it comes out, you will get a notification  
16 but you should check also because there are a lot of parties  
17 to this case, you should also check the website. Once the  
18 report and recommendation is out, it will be posted on our  
19 OZAH home page on the website. Okay? You have 10 days  
20 after that. If you disagree with my decision, you have 10  
21 days after it's issued to request oral argument before the  
22 Board of Appeals. That argument is based only on the record  
23 here. There's no new evidence. All right? But, if you  
24 think that my decision is incorrect, you can appeal within  
25 10 days of the date it's posted on the OZAH website. All

1 right? If you have any questions on the procedure, you can  
2 talk to Ellen Forbes of our office, and she will keep you  
3 up to date. All right? And with that, we are going to  
4 adjourn this hearing, and the record will finally close on  
5 February 3rd, and thank you for your patience and your  
6 input.

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C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that  
the attached pages represent an accurate transcript of the  
electronic sound recording of the proceedings before the  
Office of Zoning and Administrative Hearings for Montgomery  
County in the matter of:

Petition of Gilmore-Brunett

Special Exception No. S-2781

OZAH No. 11-05

By:

Dawn M. Bahnmitter, Transcriber

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